

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DECLINE TO ADOPT THE PROPOSED DECISION AND TO REMAND FOR THE TAKING OF ADDITIONAL EVIDENCE

Respondent Tawnie L. Hansen (Respondent) became a member of CalPERS on June 25, 1990, through her employment in a full-time salaried position with Respondent City of Eureka (the City). Throughout her early years of employment with the City, Respondent worked in full-time salaried positions with various departments. In May of 1996, Respondent took a maternity leave of absence that ended on or about September 11, 1996. Following this leave of absence, and effective September 21, 1996, Respondent permanently separated from her full-time salaried position and took a part-time hourly position with the City's police department. As a result of this permanent separation from full-time employment, the City stopped reporting Respondent's service credit to CalPERS, in accordance with its contract which excluded employees paid on an hourly basis from CalPERS membership.

On or about January 16, 2006, Respondent was reappointed to a full-time salaried position with the City, at which time the City resumed reporting her service credit to CalPERS. In 2009, Respondent was approved for disability retirement with 9.8 years of service credit, and thereafter learned that she could increase her disability retirement allowance if she could establish at least ten years of service credit. Consequently, Respondent requested to purchase the service credit for some of the time she took a maternity leave of absence. CalPERS determined Respondent could not purchase this service credit based on Government Code section 21013's requirement that an employee return to work for the same length of time as the leave of absence. Since Respondent resigned from full-time employment effective September 21, 1996, she had only returned to work for less than two weeks after taking approximately four months of maternity leave.

Respondent then requested additional service credit for the time she worked as a part-time employee with the City. CalPERS also determined she could not receive service credit for her part-time hourly compensated employment with the City due to Government Code section 20305 (a)(1) and the City's contract, which specifically excluded employees who are compensated on an hourly basis from participating in CalPERS.

Respondent appealed both of CalPERS' determinations and the matter was set for hearing by the Office of Administrative Hearings (OAH) in Sacramento. Prior to the hearing, a pre-hearing conference was held at which several issues arose, including: what effect a settlement agreement entered into between the City and Respondent has on Respondent's claim, and should the venue for the hearing be changed from Sacramento to Eureka.

The parties were ordered to submit written arguments on the above issues. In its written argument, the City argued that Respondent waived any claims for additional benefits against the City based on a settlement agreement the City and Respondent entered into to settle a civil lawsuit Respondent filed in Humboldt County Superior

Court. A copy of the settlement agreement was attached as an exhibit to the City's brief. As part of the order resolving the issues raised at the pre-hearing conference, the Administrative Law Judge (ALJ) determined that the issue regarding the settlement agreement was premature, and therefore not considered at that time. The order also included a change of venue from Sacramento to Eureka.¹

The matter then proceeded to hearing on January 22 and 23, 2014. Respondent was represented by counsel at the hearing. The issue to be resolved by the Administrative Law Judge (ALJ) was whether Respondent is entitled to service credit with CalPERS for the time, from 1996 to 2006, that she was employed as an hourly paid employee with the City.²

At the hearing, CalPERS witnesses testified regarding staff's denials of the additional service credit requested by Respondent. Staff explained that pursuant to the California Public Employees' Retirement Law (PERL) section 20305 (a)(1), part-time employees whose appointments do not fix a term of more than six months are excluded from the system unless they are members at the time they render the service and are not otherwise excluded by a provision of a contract. Since the City's contract with CalPERS excludes employees paid on an hourly basis, Respondent did not qualify to receive service credit for the time that she was paid on an hourly basis while working for the City.

The City's former director of personnel (director) testified at the hearing regarding the City's distinction between "regular" employees and temporary employees. She stated that "regular" employees, both full-time and part-time, hold positions that are "salaried," allocated in the City's budget, and include employment benefits such as benefits from CalPERS. In contrast, the temporary employees do not hold allocated positions, are paid hourly, and do not earn employment benefits. In addition, the director testified that the City's personnel department advised all the departments in the City not to allow temporary employees to work more than 999 hours per year, pursuant to the PERL section 20305 (a)(3)(B). According to the director's testimony, the personnel department wanted the police department to obtain an allocated position if it needed to use a temporary employee for more than 999 hours per year. The City's police department did not follow the personnel department's advice, and thus allowed Respondent to work more than 999 hours in various years of employment between 1996 and 2006.

After the hearing, the record remained opened for the parties to submit closing briefs. In its closing brief, the City again raised the argument that Respondent waived all claims against the City, including receipt of additional CalPERS benefits, in light of the settlement agreement that was entered into by Respondent and the City.

¹ This change of venue caused the Sacramento OAH to transfer the case to the Oakland OAH, as Eureka falls within Oakland's jurisdiction.

² On the second day of hearing, Respondent withdrew her appeal regarding the purchase of service credit for her maternity leave of absence.

On April 16, 2014, CalPERS received a Proposed Decision from the Office of Administrative Hearings granting Respondent's appeal to receive service credit for her hourly employment with the City of Eureka, in accordance with PERL section 20305 (a)(3)(B). In responding to the City's argument that Respondent waived her claim for CalPERS service credit, the ALJ concluded that the issue had not been identified at the beginning of the hearing and that the City's brief did not cite to any evidence to support the argument, and none had been found. This conclusion is completely inconsistent with the evidence submitted by the City and attached to its written argument in response to the issues raised at the pre-hearing conference. As a result, staff argues to remand the case so the ALJ can review the evidence submitted, as well as take more evidence as necessary, to resolve the inconsistency.

Because the Proposed Decision is directly contrary to the evidence in the record, this matter should be remanded so that the ALJ has the opportunity to review and take additional evidence to correct the current errors and inconsistency, and issue a new Proposed Decision grounded in the correct facts and evidence.

Because the Proposed Decision makes statements about the record which are inaccurate, the risks of adopting the Proposed Decision are high. These risks can be greatly mitigated by remanding the case for the taking of further evidence.

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