

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent John Lovell (Respondent Lovell) has been employed by Respondent California State University East Bay since August 31, 1972, and is a member of CalPERS. Respondent Lovell took several "Difference in Pay" leaves (sabbaticals). His payrate for these periods were as follows:

<u>Dates</u>	<u>Full Salary</u>	<u>Partial Salary</u>
09/22/92 – 09/20/93	\$ 5,080.00	\$ 2,658.00
01/04/99 – 01/02/00	\$ 5,703.00	\$ 3,059.82
09/04/02 – 09/22/03	\$ 6,630.00	\$ 3,595.00

For each of Respondent Lovell's sabbatical periods, the State Controller's Office incorrectly adjusted his full payrate downward to correspond with his sabbatical pay rate, and on that basis, Respondent Lovell was credited with one full year of service credit for each of his sabbatical years.

In accordance with Government Code section 21008, Respondent Lovell's full payrate should not have been changed, and his service credit should have been based on the proportion of his full payrate represented by his sabbatical payrate. As a result of this error, Respondent Lovell received the following excess service credits for his sabbatical periods:

<u>Dates</u>	<u>Excess Service Credit</u>
09/22/92 – 09/20/93	0.277
01/04/99 – 01/02/00	0.156
09/04/02 – 09/22/03	0.258

CalPERS corrected the error in service credits and provided Respondent Lovell the option of purchasing the service credits. Respondent Lovell disagreed with CalPERS' determination and appealed CalPERS' decision.

Prior to the hearing, CalPERS explained the hearing process to Respondent Lovell and the need to support his case with witnesses and documents. CalPERS provided Respondent Lovell with a copy of the Administrative Hearing Process Pamphlet. CalPERS answered Respondent Lovell's questions and clarified how to obtain further information on the process.

At the hearing, Respondent Lovell testified and presented documents which were admitted into evidence. He argued that he was working full-time even though he was on differential pay leave and should be given full-time credits.

CalPERS staff testified about the error made by the State Controller's Office in entering the information in regard to the program to correct that error once it was discovered. CalPERS staff explained this case raised the same issues as *In the Matter Of the Application for Full-Time Service Credit for Sabbatical Leave of Lynda Koolish*

Respondent, and San Diego State University, Respondent (2009) Precedential Decision No. 09-01.

The Administrative Law Judge (ALJ) concluded that CalPERS was correct that under Government Code section 21008, Respondent Lovell's service credits should be adjusted and not the payrate, and that Respondent Lovell is not entitled to full-time service credit for his difference in pay/sabbatical leaves in 1992-1993, 1999-2000, and 2002-2003. Finally, the ALJ held that CalPERS was correct in adjusting the service credit once the error was discovered.

Accordingly, the ALJ concluded that Respondent Lovell's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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