

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Benjamin M. Elizondo (Respondent Elizondo) and Raphael M. Lee (Respondent Lee) began working for the City of Garden Grove (Respondent City) as Police Cadets in 2010 and 2011, respectively. The Police Cadet position is excluded from membership in CalPERS under Respondent City's retirement contract.

On October 3, 2012, Respondent City hired Respondents in the position of Police Recruit. Respondents were in this position from October 3, 2012, through April 9, 2013, while they attended the police academy.

While Respondents were working as Police Recruits, Respondent City monitored their position for completion of 1,000 hours of work. Respondent City enrolled Respondents into CalPERS membership on February 15, 2013, based on their completion of 1,000 hours of work. Based on their enrollment date, Respondents are new members under Government Code section 7522.04, subdivision (f), and are subject to the Public Employees' Pension Reform Act (PEPRA).

Upon their graduation from the Police Academy, Respondent City hired Respondents as sworn Police Officers effective April 10, 2013. By letters dated June 7, 2022, and August 19, 2022, Respondents and Respondent City requested CalPERS determine whether Respondents' designation as PEPRA members is accurate. CalPERS requested and received information about Respondents hiring and employment with Respondent City.

CalPERS reviewed information and documents provided by Respondent City on behalf of Respondents and determined that Respondents were correctly enrolled as PEPRA members of CalPERS. CalPERS further determined that Respondents did not complete 1,000 hours of work with Respondent City on February 15, 2013.

By letters dated January 27 and January 30, 2023, CalPERS informed Respondent City that it had made preliminary determinations that Respondents did not qualify for CalPERS membership before February 15, 2013, and requested additional records to determine their correct date of membership.

By letter dated May 2, 2023, Respondents' counsel appealed CalPERS' preliminary determination, asserting that Respondents should have been enrolled as members on October 2, 2012, when they were hired as Police Recruits. Respondents contend that they should be considered classic members rather than new members subject to PEPRA.

By separate letters sent in February 2024, CalPERS affirmed its preliminary determination and informed Respondents of their right to appeal. Respondents appealed CalPERS' determination and exercised their right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings.

A hearing was held on August 20, and 21, 2025. Respondents were represented by counsel at the hearing. Respondent City did not appear at the hearing and a default was taken as to Respondent City only.

Prior to the hearing, CalPERS explained the hearing process to Respondents and the need to support their case with witnesses and documents. CalPERS provided Respondents with a copy of the administrative hearing process pamphlet, answered Respondents' questions, and clarified how to obtain further information on the process.

Respondents testified at the hearing about their work with Respondent City. They testified that while working as Police Cadets in 2012, they heard from colleagues about impending changes to California pension law contained in PEPR. Respondents understood that they would need to be hired before January 1, 2013, to receive the more favorable pension treatment as "classic members." Respondent City was not hiring new police officers in 2012, so they took steps to obtain employment elsewhere. Respondents testified that in September 2012, they were contacted by a recruiter with Respondent City and offered "full-time" positions as Police Recruits.

The offer letter did not state whether a police recruit is a full-time position, or the duration Respondents would be expected to be police recruits. Respondent City's job recruitment posting for the police recruit position at the time also mentioned that a police recruit's hiring as a sworn peace officer was conditional on several factors, including academy performance, evaluations, referrals, and the availability of positions. Respondents accepted Respondent City's offer to become police recruits.

Respondents testified that at some point when they were enrolled in the police academy, they were informed by Respondent City, that their enrollment in CalPERS would be based not on their hire date as Police Recruits, but on the date they became sworn peace officers. This meant that Respondents would not be eligible to receive the more favorable retirement benefits as "classic members."

Janna Bradley, a Benefits Supervisor for Respondent City, testified at the hearing. Ms. Bradley testified that Respondent City considered the Police Recruit a temporary appointment because the position was inherently temporary while the employee is in the police academy. Human resources forms relating to Respondents' appointment as Police Recruits confirm that their hiring as Police Recruits was considered a "temporary appointment."

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondents' appeals. The ALJ held that Government Code section 20305 is clear: in the absence of an appointment or employment contract stating the position is full-time and is expected to last longer than six months, an employee is only eligible for membership using one of the exemptions outlined in Government Code section 20305, subdivision (a)(1)-(3).

The ALJ found that Respondents' appointments were for a limited term, i.e., during their period of enrollment in the police academy. Respondents were eligible for enrollment upon their seventh month of employment or after working 1,000 hours, whichever was earlier. The ALJ found that Respondents did not achieve either of these milestones before 2013.

The ALJ also considered and rejected the legal arguments raised by Respondents. First, Respondents argued that Government Code section 20305 does not apply to them, because they were not "part-time" employees. The ALJ correctly noted that the plain language of that section makes clear that it applies to "full-time" employees under certain circumstances, or to seasonal, limited term, or intermittent employees. In the Proposed Decision, the ALJ concluded that Respondents have been properly enrolled as new members under PEPRA. The ALJ further concluded that Respondent City improperly enrolled Respondents as members on February 15, 2013.

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

January 20, 2026

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Senior Attorney