

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Application to
Purchase Service Credit Acquired through
the Comprehensive Training and
Employment Act by:

AL H. GHAFFARI,

Respondent.

Case No. 2015-0954

OAH No. 2016040589

PROPOSED DECISION

A hearing convened in this matter before Marilyn A. Woollard, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on October 20, November 2, November 10, and December 1, 2016, in Sacramento, California.

Christopher Phillips, Senior Staff Attorney, represented complainant California Public Employees' Retirement System (CalPERS).

On all hearing days except October 20, 2016, respondent Al H. Ghaffari appeared on his own behalf.

On October 20, 2016, James H. Napier, Deputy City Attorney, Los Angeles Retirement Benefits Division, appeared on behalf of the City of Los Angeles and the Los Angeles City Employees' Retirement System, which were named as respondents. By order dated November 1, 2016, CalPERS' motion to amend the Statement of Issues to remove these entities as respondents in this matter was granted. The matter proceeded with Mr. Ghaffari as the sole respondent.

Oral and documentary evidence was received and the parties offered oral closing arguments. On December 1, 2016, the record was closed and the matter was submitted for decision.

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PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED December 27 2016

ISSUES

1. Should CalPERS' determination that respondent is ineligible to purchase service credit through his employment with the City of Los Angeles (City) under the Comprehensive Employment and Training Act (CETA) be upheld?
2. Did CalPERS provide respondent with inaccurate advice, which he relied on, that he was eligible to redeposit retirement contributions he cashed out in 1979, after being laid off from his employment with the City, without any restrictions or need to meet other criteria?
3. Did CalPERS unreasonably delay its determination denying respondent's request to purchase CETA service credit, thereby causing him a monthly loss of \$475 in retirement benefits?

FACTUAL FINDINGS

Procedural Findings

1. On March 29, 2016, Carene Carolan, Chief of CalPERS' Member Account Management Division, in her official capacity, signed the Statement of Issues, which limited the issue to whether CalPERS correctly determined that respondent is ineligible to purchase service credit through his employment with the City under the CETA. A hearing was set for August 18, 2016, at the Office of Administrative Hearings in Los Angeles.
2. By order dated June 30, 2016, a change of venue to OAH Sacramento was granted. On August 11, 2016, respondent's request to continue the hearing was granted to allow him time to obtain counsel, and the hearing was re-noticed for October 20, 2016. On October 10, 2016, respondent filed a motion to continue the hearing and to amend the Statement of Issues to add his equitable issues (issues 2 and 3). CalPERS opposed continuance but acknowledged respondent's right to raise these affirmative defenses.
3. On October 17, 2016, respondent's second continuance request was denied and he was ordered to personally appear at the October 20, 2016 hearing. Respondent failed to appear, but submitted emails indicating he was ill. The matter was continued to November 2, 2016. At the subsequent evidentiary hearings, CalPERS called the following employees as witnesses: Dana Dimaggio and Angeline Spanos. Respondent testified on his own behalf. The testimony of these witnesses is paraphrased as is relevant below.

Respondent's Request to Purchase Service Credit for CETA Time

4. From August 17, 1977 through September 30, 1979, respondent worked for the City as a full-time Safety Engineering Trainee through the CETA Program. Due to this employment, respondent became a member of Los Angeles City Employees' Retirement

System (LACERS). On September 30, 1979, respondent was laid off due to the expiration of his CETA eligibility. Respondent requested that his LACERS retirement contributions be refunded. On December 10, 1979, LACERS refunded all of respondent's contributions to its system and, consequently, his membership in LACERS terminated. Respondent has never reestablished active membership in LACERS.¹

5. On December 6, 1979, respondent was hired by the Department of Industrial Relations (DIR) and became a member of CalPERS. On October 9, 1987, respondent left his employment with DIR. At his request, CalPERS refunded his retirement contributions and removed his service credit. Respondent's CalPERS membership was terminated.

6. On December 7, 1987, respondent re-established membership with CalPERS when he began working with the California Air Resources Board (CARB), Stationary Services Division. By virtue of this employment, respondent is a state miscellaneous member of CalPERS.

7. On November 28, 2012, respondent signed his "Request for Service Credit Cost Information – Service Prior to Membership, CETA & Fellowship" (Request) to purchase CETA service credits for the time he was employed with the City. On November 29, 2012, respondent personally brought his Request and supporting documentation into the CalPERS Sacramento Regional Office (SRO), where he spoke with Angeline Spanos. In addition to the completed Request form, respondent submitted a November 29, 2012 "Past Employment Verification" from the City, and two City "Payroll/Personnel Change Documents" showing his initial appointment of August 21, 1977, and his lay off effective September 30, 1979. Respondent also submitted a CalPERS "Service Credit Cost Estimate Results" form for "Service Prior to Membership." Based on data inputted by respondent into a CalPERS online calculator, this document indicated the following:

Lump-Sum Payment Amount Projection: \$16,306.44. . .
Installation Payment Amount Projection: \$16,385.81. . .

Should you choose to purchase this service credit your future monthly Unmodified Service Retirement Allowance may increase by: \$ 474.09.

8. On November 30, 2012, respondent signed and filed his Service Retirement Election Application (Application), which indicated a retirement effective date of December 29, 2012. Respondent retired and has received his retirement allowance from CalPERS since December 29, 2012.

¹ On December 14, 2012, CalPERS received a response to its "Inter-System Membership Advice" inquiry from LACERS Benefits Specialist Lourdes Quintos, who advised that respondent: "is not entitled to LACERS retirement benefits now or in the future and is ineligible to redeposit his withdrawn retirement contributions with LACERS. You have to be an 'active member' of our retirement system to be eligible for redeposit."

9. On June 13, 2013, Dana Dimaggio, of CalPERS' Service Credit Section, Customer Accounts Services Division, Retirement Account Services Section, notified respondent that he was not eligible to purchase CETA service credit from his employment with the City. Specifically, Ms. Dimaggio wrote that: "[s]ervice with City of Los Angeles is not creditable because this agency is not currently under contract with the Public Employees' Retirement System." She suggested that respondent contact LACERS for information and she gave respondent LACERS' address.

10. On October 12, 2014, respondent wrote to Ms. Dimaggio and confirmed his receipt of her June 13, 2013 letter. Respondent advised that LACERS and CalPERS "have clearly established a reciprocal relationship by contract," and he asked that CalPERS "take the necessary steps to process [his] documents related to the CETA service credit."

11. By letter dated October 23, 2014, Eleni Papailias, Staff Services Manager with CalPERS' Service Credit Section, informed respondent that he was not able to purchase CETA service credit for the period of August 21, 1977 through September 30, 1977 from CalPERS, "because the City . . . does not contract with CalPERS for retirement benefits. As such, CalPERS cannot allow the purchase of this time in our System. The City . . . contracts with the Los Angeles City Employees' Retirement System (LACERS), which provides retirement benefits to eligible City . . . employees. Employment with a LACERS-covered employer or service credit representing employment earned under any other reciprocal retirement system cannot be purchased as service credit with CalPERS, in accordance with the California Public Employees' Retirement Law (PERL)." Ms. Papailias clarified that:

In your letter to CalPERS, you state CalPERS and LACERS have established a reciprocal contract, which is correct. However, this reciprocal contract is not applicable to your eligibility to purchase CETA service credit with CalPERS. Reciprocity is an agreement among public retirement systems allowing members to move from one public employer to another public employer, within a specific timeframe, without losing some valuable retirement and related benefit rights. There is no transfer of funds or service credit between retirement systems when you establish reciprocity. Rather you become a member of both systems and are subject to the membership and benefit obligations and rights of each system.

Respondent was further informed that, "[s]ince the CETA time you are requesting was time worked under a LACERS-covered employer, you must contact that retirement system for further information concerning your eligibility to purchase service credit for your employment..." with the City.

12. On November 30, 2014, respondent wrote to Heather Hurff, Manager of CalPERS' Reciprocity Unit, and indicated that he was: "...planning to reinstate to active employment in State or a CalPERS-covered position, re-establish membership with

LACERS, and establish reciprocity between LACERS and CalPERS by redepositing the previously withdrawn contributions.”

13. On March 14, 2015, respondent filed a Notice of Appeal with CalPERS, indicating his intent to appeal the denial of his Request as outlined in Ms. Dimaggio’s June 13, 2013 letter. This Notice was received by CalPERS SRO on March 19, 2015.

14. On May 11, 2015, Sharon Hobbs, Staff Services Manager II, of CalPERS’ Service Credit Purchases and Elections Section, acknowledged respondent’s request for reconsideration of this denial. Respondent was again informed that he was not eligible to purchase CETA service credit with CalPERS for the time he worked for the City: “Since the City of Los Angeles is not a CalPERS-covered employer, we cannot attach liability to that employer for the purchase of CETA service credit” under the PERL. Respondent was advised that he “must contact LACERS directly regarding [his] eligibility to purchase CETA service credit with their System for time worked for an employer that contracts with them for retirement benefits.”

15. *Testimony of Dana Dimaggio:* Ms. Dimaggio is a CalPERS Retirement Program Specialist II in the Service Credit Costing Unit, where she has worked for the past 10 years. Her duties include reviewing members’ requests for service credit cost information, which is the paperwork required to begin the process of purchasing service credit. She reviewed respondent’s Request and supporting documents.

16. As part of her review, Ms. Dimaggio read CalPERS’ Customer Touch Point Reports (Customer Reports) pertaining to respondent. The Customer Reports consist of notes CalPERS employees make whenever they have contact with a member. CalPERS’ employees are required to make a Customer Report contemporaneously with any member interaction. Once a Customer Report is entered into the system, CalPERS employees have no ability to edit a note. Any change or correction can only be made by adding a new Customer Report, with a new date and any new information. These notes are designed for internal use.

Customer Reports for respondent, covering the period from December 30, 2003 through June 14, 2016, indicate that respondent had discussed purchasing service credit for his City CETA time with CalPERS on three occasions before he filed the Request:

A. On May 12, 2005, respondent spoke to Analyst Arlene Hagiya who noted:

[Member] asked if he could redeposit funds he took out from City of LA since it was a reciprocal system. Advised that he could not redeposit with CalPERS, but needed to contact City of LA to determine if he could redeposit with them. He did not understand. Explained several times. However, did advise that he could redeposit funds with CalPERS from when he worked

for the Dept. of Industrial Relations. [Member] had several questions. Thank you.

B. On February 4, 2010, respondent spoke to Analyst Alvarez, who wrote the following note under Service Credit Eligibility/Costing:

[Member] came into office regarding reciprocity. Spoke with City of Los Angeles and clarified member redeposit concerns with City of Los Angeles and advised Redeposit request for CalPERS SC [DIR] was submitted yesterday.

C. On October 30, 2012, respondent discussed Service Credit Purchasing with Analyst Bailey, who noted:

Member came into SRO for service credit information. Member was wanting to re-deposit his service credit his service credit [sic] from LACERS. I called and spoke with a representative with LACERS and in order to re-deposit the member has to be ACTIVE in order to re-deposit. Explained this information to the member and went over the SR [service retirement] app.

17. Ms. Dimaggio also reviewed CalPERS' "Service Credit Purchase Options Booklet" (Pub. 12, June 2012), which was effective at the time of respondent's Request and service retirement. In a section entitled "Service Prior To Membership, CETA & Fellowship Service," this publication explains:

Who's Eligible?

If you are now an active or inactive CalPERS member, you may be able to purchase service time if you worked:

[] ... []

- Under CETA for a federal or State-sponsored program from 1973 to 1982. . .

You cannot purchase CalPERS service time if:

- The agency where the service was earned does not currently have a contract with CalPERS....

(Bolding original.)

Ms. Dimaggio explained that the “contract” referenced in this publication is not a reciprocal contract, but refers to an agency’s contract with CalPERS for participation in its retirement system. The City is not a “contracting agency” with CalPERS, but has its own retirement system with LACERS. CalPERS members cannot purchase service credit earned under another retirement system. This was the basis for her June 13, 2013 determination that respondent’s Request could not be granted.

18. In Ms. Dimaggio’s experience, CalPERS has never permitted a member to purchase service credit earned in another retirement system. The existence of a reciprocity agreement between two retirement systems does not alter this result. The City’s “Agreement for Reciprocal Benefits between the Board of Administration of the Public Employees’ Retirement System and the City of Los Angeles and the Board of Administration for the City Employees’ Retirement System” specifies that its purpose is to extend enumerated rights to members of other public agency retirement systems, “provided such member enters into employment under this system [LACERS] or the reciprocal system within six months of terminating his or her employment under such other or this system.” This reciprocal agreement can be used, for example, for final compensation or vesting purposes, but it does not authorize the transfer of service credit earned in one system to another. CalPERS could not use this reciprocity agreement to approve respondent’s CETA service credit request.

19. Once respondent submitted his Request, it was likely scanned into CalPERS’ database within a few days. The system generates a “work flow,” which prioritizes tasks in date order: i.e., the first application in is the first assigned for processing. The Customer Reports next mention respondent’s Service Credit Purchase Request on June 11, 2013, when it was pulled by Christine Chehak with a notation: “CETA request for training.” Ms. Dimaggio explained that Ms. Chehak is a CalPERS trainer and that the Request was “grabbed for training purposes.” It was assigned to Ms. Dimaggio that day or the next and she wrote the denial letter to respondent on June 13, 2013.

Ms. Dimaggio explained that there is no specific timeline for responding to a member’s request for service credit purchase. The typical processing time is four or five months; Ms. Dimaggio’s response to respondent’s Request was approximately seven months after the date it was submitted. In September 2011, CalPERS launched a new computer system. The transition to this new system was still occurring when respondent’s Request was submitted. All CETA and service prior to membership requests were stopped and the normal processing time was increased to approximately seven months. During this time, respondent’s request was “on our system in the work flow queue,” which had a backlog. Her unit’s normally high volume of member service credit requests was compounded by the transition to the new computer system.²

² Ms. Dimaggio testified that there are 16 workers in her unit performing service credit purchase eligibility determinations and cost calculations. On average, the unit receives approximately 500 applications each month.

Respondent filed his Request the day before he filed his Application, and he then service retired one month later. Ms. Dimaggio has never known a CETA service purchase request to be processed and completed in one day or in 30 days. Respondent waited over a year from her determination to appeal. She reviewed his request again and reached the same conclusion, which was communicated to respondent by her manager, Ms. Papailias.

20. *Testimony of Angeline Spanos:* Ms. Spanos is a CalPERS Retirement Program Specialist I who works at the SRO. Ms. Spanos's position is as a "generalist," who provides basic retirement counseling to members, accepts applications and refers members to specialists for eligibility determinations. If a member brings in applications or requests, she will review the required forms to make sure they are properly completed and signed. Her acceptance of a member's request only means that the form is correctly filled out. She then forwards the completed applications or requests to a specialist in the appropriate unit for a determination of eligibility.

On November 29, 2012, Ms. Spanos was at the SRO, where she met with respondent and accepted his request to purchase CETA service credit. She documented this in a Customer Report of that date, by noting: "Member came into SRO today for retirement counseling. Member submitted cost request for SPM [Service Prior to Membership] along with certification from ER and estimate. Provided copy." Ms. Spanos had no independent recollection of meeting respondent on that date, but she remembered him at hearing. Although not documented in the Customer Report, Ms. Spanos indicated she would have provided a time frame for the service credit application process, "possibly of six months" which she believed to have been the then-current processing time. Ms. Spanos testified there are over 1,000 agencies which contract with CalPERS to become members of its retirement system. When she accepted respondent's application, Ms. Spanos did not know if the City was a "contracting agency" with CalPERS; since this encounter, she learned that it was not.

21. As established by the testimony of Ms. Dimaggio and Ms. Spanos, CalPERS SRO employees are generalists. They have basic knowledge of CalPERS retirement and benefits and provide basic counseling. They do not have specialized knowledge of all CalPERS units, but refer specific requests to these specialized units. SRO employees ensure that CalPERS members' applications are complete and, if so, they accept them. Accepting a member's application does not mean that the application is granted. SRO employees do not make determinations of eligibility for service credit purchase applications.

22. *Respondent's Testimony:*³ Respondent explained that, after working with the State for 23 years, he did not remember whether he had withdrawn his contributions to

³ In this testimony, respondent referenced documents pertaining to his efforts to communicate with CalPERS and LACERS. These documents were admitted and considered to the extent permitted under Government Code section 11513, subdivision (d), which provides, in pertinent part, that "hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions..."

LACERS or not. Respondent felt he was getting conflicting information from LACERS and CalPERS, with each system telling him to contact the other. On one occasion, respondent actually drove to Los Angeles and showed LACERS' employees the documentation he had. Even after this, he was told to put his request in writing, and was asked to have CalPERS sent an Inter-System Membership Advice Request, so LACERS could verify his information.

In November 2012, respondent was informed by LACERS' employee Angeles Mojica that only active LACERS members could redeposit previously-withdrawn funds. Because he was no longer an active LACERS member, Ms. Mojica told respondent to contact his retirement system, CalPERS. On November 8, 2012, Ms. Mojica sent respondent a letter verifying that his employment with the City terminated on September 30, 1979, and that he received an \$841.28 refund representing all his retirement contributions to LACERS, on December 10, 1979.

23. On November 29, 2012, respondent went to the SRO seeking accurate information when he filed his Request. He believed CalPERS' SRO employees were qualified to provide such advice when a member contacts them, as suggested in a CalPERS' document entitled "Contact Us". For some time, respondent believed the existence of the reciprocal agreement between Los Angeles and CalPERS was the "contract" that was required to allow him to purchase the CETA service credit. In his opinion, someone should have told him that, since the City was not a "contracting agency" with CalPERS, there was no point for him to pursue this with CalPERS. He now realizes the problem. Respondent did not learn that he was not a LACERS member until he received Ms. Mojica's November 2, 2012 email. When respondent met with Ms. Spanos on November 29, 2012, he was looking for guidance. Respondent expressed disbelief at Ms. Spanos' testimony that she did not know that the City, which is one of California's largest, was not a contracting agency with CalPERS at that time. In his view, Ms. Spanos should have known and told him. According to respondent, he explained the situation to Ms. Spanos, asked her if he was "in the right place" to purchase service credits and she said "yes." Ms. Spanos looked at his Request and supporting papers, and said she did not find any problem with the application. As a member, respondent deferred to Ms. Spanos' expertise.

Respondent explained that, had he known the City was not a "contracting agency" with CalPERS, he could have reinstated to his CalPERS job within 40 days of retirement. His position with CARB was still open. This would have allowed him a chance to possibly reinstate as an active member with LACERS, redeposit his past contributions and then retire from both LACERS and CalPERS at the same time. Because the 40-day post-retirement window had closed before he received Ms. Dimaggio's denial of the Request, respondent was unable to exercise this option. Respondent expressed frustration at what he believes to have been CalPERS' poor employee training and poor management in the advice he was given and in the processing speed of his Request.

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Discussion

24. As discussed below, there is no legal basis under the PERL to grant respondent's request to purchase service credit for the CETA time he worked with an employer that is not a "contracting agency" with CalPERS. This is not a mistake or omission that is correctable. Respondent did not establish that he was misled or harmed by any advice or alleged delay by CalPERS in processing his Request. To the contrary, the evidence persuasively demonstrated that respondent was repeatedly provided advice, beginning in 2005, that he should discuss the redeposit of his withdrawn LACERS contributions and the purchase of service credits for his City CETA time, with LACERS. Respondent's belief that his Request was approved when Ms. Spanos accepted it as complete for processing was not reasonable. It was not reasonable for respondent to expect that his Request would be acted upon by CalPERS in the 30 days between the time he submitted his Request and the effective date of his service retirement, or within the 40-day window for reinstatement to his CARB position. When all the evidence is considered, respondent's appeal must be denied.

LEGAL CONCLUSIONS

1. *Burden of Proof*: "As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence. . . ." (*McCoy v. Board of Retirement* (1986) 183 Cal. App. 3d 1044; Evid. Code 500.) In this matter, respondent bears the burden of establishing that his request to purchase service credit based upon his CETA employment with the City of Los Angeles should be granted under the PERL and that all required elements for his claims of equitable estoppel and laches are met.

2. *Purchase of Service Credit*: Under the Public Employees Retirement Law (PERL), Government Code section 20000, et seq., "public service" means:

(a) The period of time an employee served the state, a school employer, or a contracting agency prior to becoming a member, when the service was rendered in a position in which the employee was excluded provided one of the following conditions is met:

(1) The position has since become subject to compulsory membership in this system.

(2) The employee was excluded because the employee was serving on a part-time basis.

(3) The employee was excluded because the employee failed to exercise the right to elect membership under this part.

3. The retirement allowance received by CalPERS members is based in part on their years of service. To increase retirement benefits, CalPERS members may be eligible to purchase service credits for time spent in public service prior to becoming CalPERS members. The PERL offers various definitions of public service for which service credit may be purchased (e.g., for time spent in military service, Peace Corps, or Vista). Pursuant to Government Code section 21020, "public service" also includes "employment under a program sponsored by, and financed at least in part by" CETA. (Gov. Code, § 21030, subd. (a).) Members who elect to receive credit for public service under this section must make the contributions as specified in Sections 21050 and 21052. (Gov. Code, § 21030, subd. (b).) Benefits arising from service credited to a member under this section "shall become a liability of the employer for which the service was rendered." (Gov. Code, § 21030, subd. (c).)

4. As set forth in the Factual Findings as a whole, it is undisputed that respondent's CETA time occurred while he was working with the City and was a member of LACERS. Respondent then withdrew his contributions from, and ended his membership in, LACERS. CalPERS has no potential liability for respondent's request to purchase service credit attributable to his City CETA service. (Gov. Code, § 21030, subd. (c).)

5. The determination that respondent is ineligible to purchase service credit from CalPERS based upon his employment with the City under the CETA must be upheld. As set forth in the Factual Findings as a whole, the City is not a "contracting agency" with CalPERS, but has its own retirement system. Government Code section 20022 defines "contracting agency" as "any public agency that has elected to have all or any part of its employees become members of this system and that has contracted with the board for that purpose. . . ." Under the PERL, there is no legal basis for CalPERS to grant respondent's request to purchase service credit for his CETA time with the City, because the City is not a contracting agency within the meaning of Government Code section 20022. The reciprocal agreement between the City and CalPERS does not bring the City within the PERL's definition of "contracting agency."

6. *Correction of Errors or Omissions Statute:* The CalPERS Board is authorized by Government Code section 20160, subdivision (a), to correct a member's errors or omissions provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part. Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

Pursuant to Government Code section 20160, subdivision (b), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system, subject to subdivisions (c) and (d), which provide:

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

7. *Equitable Estoppel* The elements which must be present in order to invoke equitable estoppel are: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Driscoll v. City of Los Angeles*, 67 Cal.2d 297, 305; *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

Although equitable estoppel may be applied against the government, this principle has its limits. It is well-established that estoppel will not be applied if to do so would nullify a strong rule of policy enacted for public benefit, or if to do so would result in expanding an agency's powers. (*Fleice v. Chualar Union Elementary School District* (1988) 206 Cal. App.3d 886, 893.) The Supreme Court has recognized that the application of equitable estoppel in cases involving public employee pensions is somewhat unique, emphasizing the unique importance of pension rights to an employee's well-being. (*Longacre v. County of Ventura* (1979) 25 Cal.3d 14, 28.) Estoppel cannot be used to enlarge an agency's powers (*Page v. City of Montebello* (1981) 112 Cal.App.3d 658, 667) or to provide a benefit which is not otherwise statutorily authorized because public employee benefits are wholly statutory. (*Hudson v. Posey* (1967) 255 Cal.App.2d 89, 92.) No court has expressly invoked principles of estoppel in any factual setting, including pension cases, to contravene directly any statutory or constitutional limitations. (*Medina v. Board of Retirement* (2003) 112 Cal. App. 4th 864, 869.)

8. *Laches*: “‘Laches is an equitable defense which requires both unreasonable delay and prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors.’ (Citation.) Thus, it is not enough for a tribunal to simply find that a delay was, by virtue of the passage of time, unreasonable ‘as a matter of law.’ That finding must be supported by substantial evidence of prejudice. (Citation.)” (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 815.)

9. Respondent’s claim that CalPERS should be equitably estopped from denying his request to purchase CETA service credits is not persuasive. As set forth in the Factual Findings as a whole, respondent did not establish that CalPERS provided him with inaccurate advice that he was eligible to redeposit retirement contributions he cashed out with LACERS in 1979, after being laid off from his employment with the City. Rather, the evidence preponderates that CalPERS provided respondent with information and advice in 2005, 2010, and 2012 that he should pursue the redeposit of his withdrawn LACERS contributions and service credit for his City CETA employment with LACERS. Based on this history, it cannot be determined that respondent was ignorant of the true state of facts regarding this subject. Further, respondent has cited no authority that would permit CalPERS to go beyond the powers granted to it by the Legislature to allow him to purchase CETA service credit for time employed by an agency which is not a “contracting agency” under the PERL, or to somehow allow CalPERS to authorize redeposit of his withdrawn contributions into another retirement system.

Respondent’s laches argument also fails. Respondent did not establish that CalPERS unreasonably delayed its determination about his service credit purchase request, causing him a monthly loss of \$475 in retirement benefits. First, as a threshold matter, respondent did not establish that his purported monthly loss of \$475 in retirement benefits was accurate. As indicated in Ms. Dimaggio’s testimony, the figures respondent used in the online calculator to determine the cost and benefit of purchasing this service credit were not verified by CalPERS or his employer and were, in her opinion, inaccurate. Second, it was persuasively established that on three occasions before he submitted his Request, respondent was provided appropriate advice about the manner in which he should pursue these claims – i.e., through LACERS. Third, respondent failed to establish that a seven and one-half month processing time between submission and denial of his Request was unreasonable. In fact, respondent provided evidence that the processing of his unrelated and ultimately successful request to purchase Additional Retirement Service Credit (ARSC) in 2013 was anticipated to take nine months to process. Even assuming that there was an unreasonable delay, laches cannot be invoked to require CalPERS to take action that it has no legal authority to take.

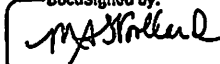
Finally, respondent did not meet his burden that any error or omission should be corrected. Relief cannot be granted under the errors or omissions statute because it would grant respondent a right to which he is not entitled under the PERL.

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ORDER

The appeal of respondent Al H. Ghaffari is DENIED.

DATED: December 22, 2016

DocuSigned by:

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MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings