

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Kelley M. Williams (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated February 27, 2024. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Respondent began employment with the County of Inyo (County) in November 2002 as a Prevention Specialist. The County is a CalPERS member; by virtue of this employment Respondent became a CalPERS member.

In 2008, Respondent became an Assistant to the County Administrative Officer (CAO). Her work involved emergency planning, training, grant preparation, coordinating the County's emergency response with State and Federal agencies, and mandatory reporting to the various State and Federal government agencies.

In 2012, Respondent urged the COA to create a job description for a "stand alone" Emergency Services Manager (ESM) position. The CAO told her if she could find funding for the position, he would approve it. Respondent found a grant to pay half of the salary of the ESM position.

In 2016, the Board of Supervisors approved an "at will," unrepresented management ESM position at salary range 78. On April 17, 2018, the Board of Supervisors hired Respondent to fill the ESM position. Respondent's employment contract provided her salary at range 78, step E, the highest of five salary steps within range 78.

In 2019, Respondent approached the CAO to renegotiate her contract. The County agreed to include the ESM position in an equity study that was being conducted for other positions. While the equity study was being conducted, the County agreed to provide Respondent with standby pay.

On June 25, 2019, the Board of Supervisors approved a standby compensation schedule of \$50 per day and \$75 per weekend for scheduled days off and holidays. Respondent's ESM position was entitled to standby pay.

The equity study report found that the ESM position was undercompensated. Respondent offered to give up standby pay in exchange for a promotion to salary range 84. The County offered Respondent a pay increase to salary range 82. Respondent agreed to range 82, step E, with no more standby pay on the condition that the County make the range 82 pay retroactive to July 1, 2020.

On November 17, 2020, the Board of Supervisors approved an amendment to Respondent's contract that increased her salary to range 82, step E, retroactive to

July 1, 2020. The County also created a special temporary step F to pay Respondent's retroactive increase in monthly installments rather than pay her a lump sum for retroactive pay. Respondent received pay at range 82, step F, from November 26, 2020, through June 9, 2021. After the retroactive component of her raise was fully paid, Respondent's position reverted to the range 82, step E rate.

On November 1, 2021, Respondent applied for service retirement. She retired for service effective December 31, 2021. After Respondent retired, the County reclassified the ESM position back to salary range 78. The County Board of Supervisors approved this reclassification in its public meeting on January 4, 2022, four days after Respondent retired.

CalPERS reviewed the compensation that the County reported on Respondent's behalf and determined that Respondent's increased payrate to range 82 was not found on the County's publicly available pay schedule. CalPERS further determined that the temporary increase to Step F was not available to any other employee, group or class. Therefore, CalPERS limited Respondent's payrate to range 78 based on the publicly available pay schedule for the ESM position.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). The hearing was convened on July 25, 2023, but was paused to allow the County time to present additional documents to CalPERS for review. CalPERS did not change its determination, and the hearing resumed on January 30, 2024. Respondent represented herself at the hearing. The County was represented by its Deputy County Counsel.

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

At hearing, Respondent testified about her work in the ESM position and the reasons she believed the pay increase was justified. Respondent testified that the ESM job description required her to work with a disaster coordinator, a position that the County created but had not filled. As a result, Respondent felt she was doing two jobs. Respondent offered her employment contracts, communications between her and the County relating to her pay increase, and snapshots of the County's website preserved by the internet archive service Wayback Machine on certain dates.

CalPERS presented testimony from a compensation compliance analyst to explain CalPERS' review of Respondent's final compensation. CalPERS determined that Respondent's compensation reported at range 82, step F, did not comply with the PERL, because it exceeded the rates listed on the County's publicly available pay schedules, it was only available to Respondent, and the publicly available pay schedule showed the ESM position should have been compensated at range 78. Further, special compensation reported on Respondent's behalf did not qualify because the County

calculated those amounts based on the non-compliant base payrates. CalPERS also determined that Respondent's compensation at range 82, step E, which occurred after her retroactive pay was completed, was not supported by a publicly available pay schedule because again, the ESM position should have been compensated at range 78. In addition, after Respondent retired, the County reclassified the ESM position from range 82 to range 78. This was evidence that the range 82 payrate was applied only to Respondent and not to all other people in the classification. For those reasons, CalPERS limited Respondent's payrate to salary range 78, pursuant to the County's publicly available pay schedule for the ESM position.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. Although the Board of Supervisors approved Respondent's pay increase to range 82, steps E and F at a public meeting, and the approval was a publicly available document, the ALJ found that Respondent's payrate was not included in a board-approved publicly available pay schedule that listed all employee positions. In addition, the board-approved employment contract only referenced Respondent, and did not apply the payrate to an entire group or class of employees. The ALJ found that the employment contract does not meet the statutory requirements for a publicly available pay schedule, which should be "a written or printed list, catalog, or inventory of the rate of pay or base pay of one or more employees who are members of CalPERS." The ALJ also found that the range 82 steps E and F salary was an attempt to improperly convert on-call or standby pay into payrate.

In the Proposed Decision, the ALJ concludes that CalPERS correctly calculated Respondent's final compensation.

Respondent has presented no new evidence in her Petition for Reconsideration that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the April 16, 2024, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

June 12, 2024

AUSTA WAKILY
Senior Attorney