

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE CORRECTED PROPOSED DECISION, AS MODIFIED

Donna Whitmore (Respondent) was employed by Respondent Oakland City Housing Authority (Housing Authority), as Assistant Director of Leased Housing. By virtue of her employment, she is a local miscellaneous member of CalPERS.

Respondent submitted an application for service retirement on September 5, 2019. Effective June 15, 2019, Respondent service retired and has been receiving her retirement allowance since November 1, 2019.

CalPERS staff reviewed the compensation reported by Housing Authority. Respondent's payroll records showed that from September 18, 2017 through June 14, 2019, Housing Authority reported compensation in addition to Respondent's payrate as Assistant Director of Leased Housing, as special compensation. The additional compensation was a five percent salary increase and was identified as Temporary Upgrade Pay from October 1, 2018 through June 14, 2019 and Off-Salary Schedule Pay from September 18, 2017 through September 30, 2018 on Respondent's payroll records. The additional compensation was for Respondent performing the job duties of another Assistant Director position – Assistant Director of Property Services¹. The Assistant Director of Property Services had a lower pay range on Housing Authority's pay schedule (Range 15) compared to Respondent's position as Assistant Director of Leased Housing (Range 18).

CalPERS staff determined that this additional compensation is not eligible as special compensation pursuant to Government Code section 20636 and Title 2, California Code of Regulations, section 571, and therefore would not be included in the calculation of Respondent's final compensation.

In sum, CalPERS determined that the five percent salary increase for Respondent performing the additional duties of the Assistant Director of Property Services position did not qualify as "compensation earnable" under Government Code section 20636. CalPERS determined that the additional compensation did not meet the definition of Temporary Upgrade Pay under Title 2, California Code of Regulations, section 571 because Respondent Whitmore did not work in an "upgraded position/classification."

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on April 27, 2021. Respondent represented herself at the hearing. Housing Authority did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided

¹ Also referred to as Assistant Director of Property Management, Assistant Director of Property Operations, and Assistant Director of Property.

Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At hearing, a representative of Housing Authority testified that from September 25, 2017 through June 14, 2019, Respondent gave up all her Assistant Director of Leased Housing duties and assumed almost all the Assistant Director of Property Services duties. He testified that Respondent's Assistant Director of Leased Housing position was paid at a higher salary range at Range 18 compared to the Assistant Director of Property Services position, which was paid at Range 15. He testified that Respondent was paid an additional five percent on top of her Assistant Director of Leased Housing salary for performing the duties of the Assistant Director of Property Services position. He testified that during that time, Respondent maintained her Assistant Director of Leased Housing classification.

Respondent testified on her own behalf. Respondent testified that the Assistant Director of Property Services job duties she assumed were not defined in her Assistant Director of Leased Housing job specification. Respondent argued that the additional job duties were an upgrade to her Assistant Director of Leased Housing position.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent's reassignment from Assistant Director of Leased Housing to Assistant Director of Property Services was not an upgrade in position or classification. The ALJ found as follows:

[T]he Housing Authority did not change [R]espondent's classification. She remained Assistant Director of Leased Housing despite performing the duties of Assistant Director of Property Management. (Factual Finding 6.) Even if the Housing Authority were to reclassify [R]espondent as Assistant Director of Property Management, it would not constitute an upgrade. The classification level for Assistant Director of Leased Housing is 18. (Factual Finding 4.) The classification level for Assistant Director of Property Management is 15. (Factual Finding 5.)

In the Corrected Proposed Decision, the ALJ concludes that Respondent's additional compensation, the five percent salary increase, "does not qualify as special compensation, and should not be included in her final compensation." The ALJ concludes that CalPERS properly excluded the additional compensation from Respondent's retirement allowance calculation.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid ambiguity, staff recommends replacing the word "Employee" before "Retirement Law" with "Employees" on page 2, in paragraph 2 of the Corrected Proposed Decision and replacing the date "August 28, 2017" with "September 28, 2017" on page 3, in paragraph 6 of the Corrected Proposed Decision.

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

July 14, 2021

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