

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Samuel B. Villalobos (Respondent) established membership with CalPERS on December 15, 1980, through his employment with the Community Redevelopment Agency for the City of Los Angeles (CRA-LA). On November 3, 2014, Respondent submitted a Service Retirement Election Application requesting an effective retirement date of November 15, 2014. Respondent has been receiving retirement benefits from CalPERS since February 2, 2015.

Prior to CalPERS membership, Respondent was an employee of Los Angeles County (L.A. County) from March to December 1977 while he worked for the University of California Cooperative Extension (UCCE) under the Community Development Commission of L.A. County. Respondent's position was sponsored by the Comprehensive Employment and Training Act of 1973 (CETA).¹ Subsequent to Respondent's position with L.A. County, he established membership with the University of California Retirement Plan (UCRP) through employment at the University of California Berkeley. Respondent's membership with UCRP ended on December 14, 1980, and pursuant to his request, his UCRP contributions were withdrawn and refunded to him on April 30, 1981.

By letter dated April 20, 1993, Respondent requested, in relevant part, that CalPERS redeposit his withdrawn contributions from the time he was an employee with L.A. County in 1977.²

In a letter dated January 14, 1994, CalPERS denied Respondent's request to redeposit his withdrawn contributions because (1) there are no provisions in the Public Employees' Retirement Law (PERL) that allows credit for his service with L.A. County to count as CalPERS service credit; and (2) L.A. County does not contract with CalPERS to provide retirement benefits to its eligible employees.

Over the next 25 years, Respondent repeatedly requested that CalPERS allow him to purchase CETA service credit for the time he was an L.A. County employee. CalPERS consistently informed Respondent that he could not purchase CETA service credit from CalPERS because the PERL does not allow him to earn CalPERS service credit as an L.A. County employee.

The PERL defines "public service" to include employment under a program sponsored by and financed, at least in part, by CETA. (Gov. Code § 21030(a).) However, benefits

¹ CETA was enacted by Congress in 1973 to consolidate a number of existing federal job training programs to help unemployed, underemployed, and disadvantaged individuals. CETA funds were administered by state and local governments.

² In subsequent correspondence, Respondent clarified that he was seeking to purchase CETA service credit only for the March-December 1977 time period and not to redeposit withdrawn contributions from his time as a member of UCRP.

arising out of CETA service are the liability of the employer for which the service was rendered. (Gov. Code § 21030(c).) Because Respondent's service was performed for L.A. County, the liability for any benefits associated with CETA service would be L.A. County's responsibility. For these reasons, CalPERS repeatedly informed Respondent that he should contact the Los Angeles County Employees' Retirement Association (LACERA) or UCRP because he would need to purchase the CETA service from one of those retirement systems.

Respondent also contacted LACERA and UCRP regarding the purchase of CETA service credit. LACERA and UCRP separately responded to Respondent's inquiry informing him that they were unable to confirm he was an L.A. County and/or UCCE employee in 1977. However, after Respondent provided additional supporting documentation, LACERA, by letter dated December 2, 2014, responded to Respondent's inquiry and informed him that he could purchase CETA service credit from LACERA because his service was performed for L.A. County. LACERA's offer was contingent on Respondent meeting other eligibility requirements. Despite LACERA's offer, Respondent continued to contact CalPERS requesting that he be allowed to purchase CETA service credit from CalPERS for the time he was an L.A. County employee.

By letter dated October 8, 2019, CalPERS issued Respondent a formal determination letter informing him that he is not eligible to purchase CETA service credit from CalPERS for the time he was an employee of L.A. County because he was not working for a CalPERS contracted employer. Respondent was also notified of his appeal rights.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on November 10, 2021, December 6, 2021, and December 7, 2021. Respondent represented himself at the hearing.

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

CalPERS presented evidence at the hearing supporting its determination. In addition, CalPERS presented the testimony of two CalPERS team members: one from the Member Account Management Division, and one from the Pension Contracts and Prefunding Programs Division.

CalPERS' team member from Member Account Management Division testified that the PERL allows the purchase of CETA service credit; however, the liability for the CETA service credit falls on the agency under which the work was performed. The

witness testified that Respondent's CETA service was performed for L.A. County.³ Consequently, Respondent's CETA service credit would need to be purchased from LACERA, which administers benefits for L.A. County employees. Even though Respondent became a CalPERS member following his time as an L.A. County employee, this did not provide him the right to purchase the CETA service credit from CalPERS.

CalPERS team member from the Pension Contracts and Prefunding Programs Division testified regarding the contractual rights governing Respondent's various employers. Respondent's CETA service was performed for L.A. County which did not contract with CalPERS to provide benefits for their eligible employees. CalPERS' witness also testified that only active employees at the time an agency contracts with CalPERS would be eligible for benefits. Consequently, Respondent did not obtain the right to purchase CETA service credit from CalPERS simply because CRA-LA and Community Development Commission - County of Los Angeles (CDC-LA) contracts with CalPERS, and Respondent later worked for these agencies. These agencies do not take on the liabilities of non-contracting agencies, so Respondent's argument that he could purchase CETA service credit from CalPERS for work performed for L.A. County was not supported by the PERL, or the contracts between CalPERS and Respondent's contracting agency employers.

Respondent testified on his own behalf. He believes he is entitled to purchase CETA service credit from CalPERS. Respondent admitted that he was an employee of L.A. County at the time he performed the CETA service. However, he argued that because his later employers, CRA-LA and/or CDC-LA, oversee the Farm Advisor Program he worked on from March to December 1977, he was eligible to purchase CETA service credit from CalPERS.

Respondent also called Steve Koffroth and Luciana Giorgi to testify on his behalf. Mr. Koffroth is employed by the Service Employees International Union (SEIU) and was involved in the negotiation of the memorandum of understanding (MOU) governing Respondent's employment at CRA-LA. However, Mr. Koffroth testified that he did not know whether the PERL required Respondent to be an employee of CRA-LA at the time of CETA service in order to be eligible to purchase that benefit.

Ms. Giorgi testified that she was familiar with the provisions of the MOUs governing Respondent's employment at CRA-LA. However, she did not know who employed Respondent from March to December 1977, and she did not know whether the MOUs would provide Respondent the right to purchase CETA service credit for the work he performed prior to becoming an employee of CRA-LA.

³ Prior to the hearing, the records provided to CalPERS did not conclusively establish whether Respondent was an employee of L.A. County or UCCE during the at-issue period. However, evidence presented at the hearing conclusively established Respondent was an L.A. County employee from February to December 1977.

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 has the burden of establishing by a preponderance of the evidence that he is entitled to purchase CETA service credit with CalPERS for his employment with L.A. County from March to December 1977. Respondent did not meet his burden of proof.

The ALJ found that under Government Code section 21030, subdivision (c), "benefits arising from CETA service credit become the liability of the employer for which the CETA service was rendered." In this case, Respondent's 1977 CETA service was performed for L.A. County, not for any CalPERS covered agency. For this reason, the ALJ found that Respondent must look to LACERA, and not CalPERS, to obtain CETA service credit for the work he performed from March to December 1977.

The ALJ rejected Respondent's argument that he is eligible to purchase CETA service credit from CalPERS because he later became an employee of CRA-LA and/or CDC-LA. Citing to Government Code section 21020, subdivision (e), the ALJ found that when functions previously performed by a public agency are later assumed by a CalPERS contracting agency, the employees who perform those functions must have been "transferred to or employed by the contracting agency without change in occupation or position." At the time of transfer of functions, the CDC-LA could have hired LA County employees. However, those employees must have been active employees at the time of transfer to become a CalPERS member. A former employee like Respondent does not gain membership. Respondent did not establish the MOUs (allowing employees to purchase CETA service credit) specifically authorize purchase of credit for his CETA service which was performed by a non-CalPERS-contracting agency. The ALJ found that such an interpretation of the MOU language would contravene the provisions of the PERL, including Government Code section 21030, subdivision (c), which specifies that Respondent's CETA service credit is the liability of the employer for which the CETA service was rendered. The ALJ found CalPERS witnesses' testimony credible and convincing that nothing in CRA-LA and/or CDC-LA's contracts with CalPERS provide Respondent with this right.

The ALJ concludes that "Respondent is not entitled to purchase CETA service credit with CalPERS for his employment with County/UCCE from March 1977 through December 1977." Consequently, the ALJ found that CalPERS' denial of Respondent's request to purchase CETA service credit must be upheld.

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

April 19, 2022

John Shipley
Senior Attorney