

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Statement of Issues Against:

LYNNELLE GRUMBLES,

Respondent,

and

SANTA CLARITA VALLEY SCHOOL FOOD SERVICE AGENCY,

Respondent.

Agency Case No. 2022-0482

OAH No. 2022090792

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 15, 2023.

Preet Kaur, Senior Attorney, represented complainant Kimberlee Pulido, Chief, Retirement allowance Services Division, California Public Employees' Retirement System (CalPERS).

Margaret Chidester and Ariel Greenwood, Attorneys, represented respondent Lynelle Grumbles (Dr. Grumbles), who was present, and respondent Santa Clarita Valley School Food Service Agency (FSA or Agency) (collectively, respondents).

Oral and documentary evidence was received. The record was held open until April 14, 2023, to permit closing briefs to be filed. Granting a motion complainant brought on March 14, 2023, joined by respondents, the ALJ issued an order holding the record open until April 24, 2023, to extend the closing briefing deadlines.

Complainant filed a closing brief on March 27, 2023; it was marked for identification as exhibit 17. Respondents filed a closing brief on April 12, 2023; it was marked for identification as exhibit S. With their closing brief, respondents asked the ALJ to officially notice two documents, (a) a copy of the Legislative Counsel's Digest text of Senate Bill No. 782, and (b) a newspaper article. The request for official notice was marked for identification as exhibit T. Complainant filed a reply brief and an objection to respondents' request for official notice on April 24, 2023; it was marked for identification as exhibit 18.

The ALJ reopened the record on April 26, 2023, to consider respondents' request for official notice and complainant's objections and to allow the parties to further brief the issue of official notice by May 10, 2023. No party filed a brief. Respondents' request was granted. Official notice was taken under Government Code section 11515 of Senate Bill No. 782 (2019-2020 Reg. Sess.) with Legislative Counsel's Digest as approved by the Governor on September 20, 2019; the document was marked and admitted as exhibit U. Respondents' request for official notice of the newspaper article was denied. Among other reasons, the document was not relevant to the issues at hearing. The record was closed and the matter was submitted for decision on May 10, 2023.

SUMMARY

The Agency is a public agency that contracts with CalPERS to provide a retirement allowance to its retired employees. The Agency employed Dr. Grumbles and reported to CalPERS, for retirement allowance purposes, Dr. Grumbles' unused sick leave. That unused sick leave comprised both unused sick leave Dr. Grumbles accrued while an Agency employee and unused sick leave transferred to the Agency from Visalia Unified School District, Dr. Grumbles' previous employer. When Dr. Grumbles retired from the Agency, CalPERS calculated her retirement allowance, including in its calculations the unused sick leave transferred from the Visalia Unified School District. CalPERS began paying Dr. Grumbles a monthly retirement allowance.

In April 2022, CalPERS notified the Agency and Dr. Grumbles it had determined that the unused sick leave transferred from Visalia Unified School District should not be credited for retirement allowance. CalPERS recalculated Dr. Grumbles' retirement allowance and began paying a lower monthly amount. It also began recapturing what it considered overpayments by further reducing monthly payments to Dr. Grumbles. Respondents challenged the recalculation and the recoupment.

Respondents' appeal is denied in part and granted in part. Having originally determined Dr. Grumbles was entitled to a retirement allowance based in part on unused sick leave transferred from a previous employer to the Agency, and having paid that allowance to Dr. Grumbles monthly, CalPERS's current decision to stop paying those benefits and recoup amounts representing overpayments complies with the Public Employees' Retirement Law (PERL). CalPERS must, however, again recalculate Dr. Grumbles' benefits, deducting the sick leave she used from the unused

sick leave transferred from the school district, rather than from the unused sick leave she accrued at the Agency.

FACTUAL FINDINGS

Jurisdiction and Parties

1. CalPERS is a unit of the Government Operations Agency. (Gov. Code, § 20002.) CalPERS administers a defined benefit plan funded by member and employer contributions and by earnings on those contributions.

2. The Agency is a joint powers agency created by several school districts to provide food services. The Agency employed Dr. Grumbles as Chief Executive Officer. On September 9, 2019, Dr. Grumbles submitted an application for service retirement through myCalPERS Member Self-Service. She retired effective December 30, 2019. Dr. Grumbles' employment at the Agency establishes her as a miscellaneous member of CalPERS. Once Dr. Grumbles retired, CalPERS began paying her a retirement allowance.

3. On April 13, 2022, CalPERS notified the Agency and Dr. Grumbles that it intended to reduce Dr. Grumbles' retirement allowance, which it found was based in part on an inflated number of unused sick leave hours. CalPERS asked the Agency to adjust the amount of unused sick leave reported for respondent in order to comply with Government Code section 20965 by May 14, 2022.

4. Dr. Grumbles and the Agency appealed CalPERS's decision.

5. Complainant served the Agency with a Notice of Hearing on October 4, 2022, and with a Statement of Issues on October 14, 2022. This hearing ensued.

Background

6. Before working for the Agency, Dr. Grumbles worked for over nine years at Visalia Unified School District, from February 2005 to June 2014. She had worked for other school districts previously.

7. Dr. Grumbles left Visalia Unified School District to work for the Agency as its Chief Executive Officer, beginning on July 1, 2014.

8. CalPERS and the Agency entered into a contract effective April 26, 1990, amended several times since, that makes its employees miscellaneous members and applies statutory obligations and certain benefits provisions of the PERL to the Agency and its employees.

9. The contract provides that Agency employees, other than local safety members, are miscellaneous members of CalPERS "*subject to all provisions of the [PERL] except such as apply only on election of a contracting agency* and are not provided for herein and to all amendments to [the PERL] hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency." (Ex. 9, p. A66, italics added.)

10. The contract reflects that the Agency elected to be subject to optional provisions including "Section 20965 (Credit for Unused Sick Leave)." (Ex. 9, p. A67.) The contract provides that the Agency "shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members of said Retirement System." (*Ibid.*)

///

///

11. When she left Visalia Unified School District, Dr. Grumbles had accrued unused sick leave. She transferred that unused sick leave to the Agency, for which the Agency credited her.

12. Dr. Grumbles then accrued sick leave as an employee of the Agency.

13. The Agency reported to CalPERS for service credit not only unused sick leave Dr. Grumbles accrued while employed at the Agency, but also unused sick leave Dr. Grumbles transferred to the Agency from her prior employer, Visalia Unified School District.

14. CalPERS calculated Dr. Grumbles' benefits allowance based on, among other things, the Agency reporting 250.56 days of unused sick leave.

15. CalPERS began paying Dr. Grumble's retirement allowance.

16. In its April 13, 2022, notice to the Agency and Dr. Grumbles of the adjustment to Dr. Grumbles' retirement allowance, CalPERS wrote that it had erroneously credited her for unused sick leave she had accrued at Visalia Unified School District and transferred to the Agency. CalPERS recalculated Dr. Grumbles' retirement allowance, eliminating the 193.06 days of unused sick leave transferred from the Visalia Unified School District and crediting her with only the days of unused sick leave she accrued at the Agency. CalPERS calculated that amount to be 57.50 days, after deducting 29.50 days of sick leave Dr. Grumbles used while employed by the Agency. CalPERS notified Dr. Grumbles she would begin receiving reduced monthly benefits.

17. CalPERS also notified Dr. Grumbles she would have to return to CalPERS \$6,670.28, the total amount paid to Dr. Grumbles in excess of what CalPERS now

determined was the correct amount. Because Dr. Grumbles did not specify how she wished to repay the alleged overpayments, on August 1, 2022 CalPERS began issuing a monthly retirement allowance to Dr. Grumbles reduced by \$37.59 per month so that the alleged overpayment would be recaptured over the course of Dr. Grumbles' retirement, based on actuarial calculations.

CalPERS's Internal Review and Reduction in Benefits Paid to Dr. Grumbles

18. On August 19, 2021, CalPERS's Office of Audit Services selected the Agency for unused sick leave review as part of a review of public agency employers that reported unused sick leave. On February 3, 2022, CalPERS published a final report, entitled "Unused Sick Leave Review," concluding that the Agency overreported unused sick leave for former employee Dr. Grumbles. (Ex. 10, p. A82.) The report specifically found that respondent accrued 12 hours of sick leave per month under a labor agreement with the Agency and that the Agency employed her for 66 months, resulting in 99 days, or 792 hours, of unused sick leave.

19. The Agency reported 250.56 days of unused sick leave.

20. The report explained that the Agency's records reflected that 193.06 days of unused sick leave was transferred from Visalia Unified School District, respondent's prior employer, to the Agency. The report stated, "Only [unused sick leave] granted by the [Agency] was reportable for additional service credit," representing those unused sick leave days accrued by respondent "during the normal course of employment with the employer which granted the sick leave credit." (Ex. 10, p. A80.)

21. In its April 13, 2022 notice of final audit determination, CalPERS requested that the Agency "adjust the amount of unused sick leave reported on behalf

of Lynnelle Grumbles to comply with Government Code [s]ection 20965 by May 14, 2022.” (Ex. 3, p. A15). CalPERS additionally stated that if Dr. Grumbles’ “unused sick leave amount has not been adjusted by May 14, 2022, CalPERS will remove the overstated unused sick leave per OFAS’ final report for Job Number 1P21-052.” (*Ibid.*).

22. On May 16, 2022, CalPERS reduced Dr. Grumbles’ days of unused sick leave from 250.56 days to 57.50 days, resulting in a reduction in total service credit and a decrease in respondent’s unused sick leave. This reduced respondent’s retirement allowance by \$236.91 per month, to \$10,427.91, effective July 1, 2022. (Ex. M, p. 2.) CalPERS notified Dr. Grumbles that her unused sick leave had been adjusted from 250.56 days to 57.50 days effective December 30, 2019. (Ex. 1, pp. A11-A12; Ex. M, p. B97).

23. On May 24, 2022, CalPERS further notified Dr. Grumbles that CalPERS was seeking to collect overpayment of \$6,670.28. (Ex. 1, pp. A11-A12; ex. M.). CalPERS gave Dr. Grumbles two options to repay the overpayment and informed her that if she did not choose an option within 30 days, CalPERS would apply an actuarial equivalent permanent reduction of \$37.59 per month to her retirement allowance beginning August 1, 2022. (Ex. 1, p. A12).

24. On July 5, 2022, to recoup overpayments, CalPERS applied an actuarial equivalent permanent reduction of \$37.59 per month to Dr. Grumbles’ retirement allowance, effective August 1, 2022. (Ex. 1; ex. M, p. B97.)

///

///

///

LEGAL CONCLUSIONS

Applicable Law

1. CalPERS is the agency charged with administering the PERL. (Gov. Code, § 20000 et seq.) The PERL authorizes and requires the Board of Administration of CalPERS to pay retirement allowances to qualified members. At issue here are sections of the PERL that concern retirement allowance service credit for employees for unused sick leave. (See Discussion, *infra*.)

2. "Reports of unused days of sick leave shall be subject to audit and retirement allowance may be adjusted where improper reporting is found." (Gov. Code, § 20965.) The CalPERS Board of Administration must correct actions CalPERS has taken as a result of error. (Gov. Code, § 20160, subd. (b).) In cases where CalPERS has made erroneous payments to a member, its right to collect repayment shall expire three years from the date of payment, or 10 years if the payments were a result of fraud. (Gov. Code, § 20164, subds. (c), (d).)

Burden and Standard of Proof

3. Complainant initiated this action by executing a Statement of Issues in response to respondents' appeal from a CalPERS determination. (Cal. Code Regs., tit. 2, § 555.2; see Factual Finding 5.)

4. Although complainant filed a Statement of Issues, complainant bears the burden of proof because CalPERS seeks to change the status quo. The CalPERS determination from which respondents appealed was a decision to reduce the retirement allowance it was paying to Dr. Grumbles and to recoup money it alleges was distributed in error. (See *Conservatorship of Hume* (2006) 140 Cal.App.4th 1385,

1388; *McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) CalPERS must show that, having originally determined respondent was entitled to a retirement allowance based in part on unused sick leave transferred from a previous employer to the Agency, and having paid that allowance monthly, its current decision to reduce the allowance and recoup overpayments complies with the PERL.

5. The standard of proof is a preponderance of the evidence, meaning that CalPERS is obliged to adduce evidence that has more convincing force than that opposed to it. (Evid. Code, § 115; *Glover Vernon. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

Discussion

CALPERS'S RE-DETERMINATION

6. Dr. Grumbles retired from the Agency on December 29, 2019, effective, for CalPERS purposes, on December 30, 2019. CalPERS began paying a retirement allowance to Dr. Grumbles calculated by including unused sick leave she transferred from Visalia Unified School District to the Agency, as the Agency reported. CalPERS determined it was in error, reduced Dr. Grumbles' monthly benefits payments accordingly, and reduced the payments further to recapture overpayments already made. (Factual Findings 2, 14-17.)

7. The PERL sections addressing service credit for sick leave, Government Code sections 20963, 20963.5, and 20965, were amended effective January 1, 2020. (Neither party contends Dr. Grumbles was a state member when she retired, so the section pertaining to state members, Government Code section 20963, does not apply.) The versions of those PERL sections applicable to respondent are the versions in place when Dr. Grumbles retired, before the sections were amended. But any

application of the pre-amended versions must be informed by a reading of the amended versions that were adopted to clarify them.

8. The legislative history of the Senate Bill No. 782 amendments to sections 20963, 20963.5, and 20965 effective January 1, 2020, includes the following analysis of the amendments' effect:

This bill makes various *technical and non-controversial changes* to various sections of the Government Code governing CalPERS to maintain and ensure effective administration of the system. Specifically, this bill: [¶] . . . [¶]

(3) Reorganizes Government Code sections related to converting unused sick leave to service credit by separating the different types of employers (i.e., the state, school employers, and contracting agencies) *to clarify their respective requirements for offering and reporting the benefit*. This bill also removes related obsolete provisions *and clarifies that, for CalPERS members employed by a school district, county superintendent of schools, or community college district, unused sick leave converted to service credit includes that amount transferred from a previous school employer to the school employer from which a member retires* pursuant to certain provisions of the Education Code (GC Sections 20837, 20963, 20963.5, and 20965).

(Ex. 14, pp. 180-181, italics added.)

9. Because these amendments were technical and enacted only to reorganize and clarify, they do not represent any substantive change in the statutes applicable to the Agency in this case.

10. When Dr. Grumbles retired she was a local miscellaneous member. The section pertaining to local miscellaneous members, Government Code section 20965, as amended effective January 1, 2020, provides:

A local miscellaneous member . . . , whose effective date of retirement is within four months of separation from employment with the employer that granted the sick leave credit, shall be credited at the member's retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by the member's employer. *The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of the member's employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit.* Reports of unused days of sick leave shall be subject to audit and retirement allowance may be adjusted where improper reporting is found.

(Gov. Code, § 20965, subd. (a), italics added.)

11. The amended Government Code section 20965 continues: "Any contracting agency that is a school district, county office of education, or community college district that elects to contract for unused sick leave conversion under this

section . . . shall be subject to the provisions of Section 20963.5." (Gov. Code, § 20965, subd. (c).)

12. The Agency is a public agency, subject to Government Code section 20965. It is not a school district, county office of education, or community college district; those agencies are subject to Government Code section 20963.5. And when Dr. Grumbles retired, she was not a school member or a local member employed by a contracting school district, county office of education, or community college district.

13. The section pertaining to school members or local members of a contracting school district, Government Code section 20963.5, as amended effective January 1, 2020, provides: A school member "or a local member employed by a contracting agency that is a school district, county office of education, or community college district, whose effective date of retirement is within four months of separation from employment with the employer subject to this section that granted the sick leave credit," shall be credited with service credit for unused days of sick leave certified to the board by the employer. "The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of the member's employment. Reports of unused days of sick leave shall be subject to audit and retirement allowance may be adjusted where improper reporting is found. *For purposes of this subdivision, sick leave shall include sick leave granted by the employer subject to this section and any sick leave transferred to that employer pursuant to Section 44979, 45202, 87783, or 88202 of the Education Code.* (§ 20963.5, subd. (a), italics added.)

14. CalPERS confirmed that classified school district employees may transfer unused sick leave from one school district to another under applicable Education Code sections in a Circular Letter 200-033-22 released on June 1, 2022. (Ex. 15.) But, the

Circular Letter explained, school district employees may not transfer unused sick leave to a separate joint powers authority (JPA). The Circular Letter is consistent with the PERL, section 20963.5.

15. Unrelated to the PERL provisions governing retirement allowances and reporting service credit, a classified employee of a school district may transfer unused sick leave to another district (Ed. Code, § 45202) or to a joint power created by two or more school districts (Ed. Code, § 45100.) The classified employee may use the unused sick leave for whatever purposes lie within the purview of the employing school district or joint power authority.

16. CalPERS does not have jurisdiction over transfer of the sick leave; its jurisdiction covers the reporting of sick leave for pension purposes. CalPERS's Circular Letters cover only retirement allowances reporting. Under Government Code section 20965, the Agency has no right to report transferred unused sick leave to CalPERS for service credit. There is no authority under the PERL, which governs retirement allowances, or even under the Education Code, for a JPA or a school district to claim that unused sick leave not accrued at the employee's final employer entitles the employee to retirement allowance based on that unused sick leave.

17. A joint powers agency comprised of school district members has the same authority and powers, and restrictions, as those of any member school district, so long as it exercises those powers in furtherance of the functions and objectives of a joint powers agreement. (Gov. Code, § 6503.) The functions of the Agency as outlined in the Joint Powers Agreement in this case include "[t]o employ agents and employees;" "[t]o incur debts, liabilities, and obligations;" and "[t]o perform such other functions as may be necessary or appropriate to carry out this Agreement, *so long as*

such other functions so performed are not prohibited by any provision of law." (Ex. 7, italics added.)

18. While Government Code section 6503 on its face pertains to powers exercised within the scope of the agreement among the school districts, the powers of school districts and of joint powers authorities with respect to the PERL are distinguishable and are set out in section 20963.5. The PERL has nothing to say about and does not purport to restrict or prohibit transferring unused sick leave between school districts and a JPA, or other internal uses to which a school district or a JPA may put unused sick leave. The PERL does speak, however, to benefits claims made on the retirement system.

19. The PERL and is the sole authority for payment of retirement allowances to qualified members. The PERL prohibits reporting to CalPERS for retirement credit a miscellaneous member's unused sick leave not accrued at the employer from which the member retires. (Gov. Code, § 20965.) The PERL's prohibition is related to the JPA's financial contributions to the retirement system, as determined by the scope of its contractually defined benefits.

20. The Agency argues that CalPERS's re-determination of Dr. Grumbles' benefits would require her to waive the right to transfer unused sick leave from a previous employer, in violation of Education Code section 45202 and public policy. (Ex. S, pp. Z88-Z93.) The Agency is incorrect. No rights to transfer unused sick leave under the Education Code are affected by CalPERS's decision. But the right to a retirement allowance, and the method for calculating them, is governed by the PERL, not by the Education Code, and by the contract between the Agency and CalPERS (see Factual Findings 8 through 10). Dr. Grumbles, having retired from employment with the Agency, is entitled to a retirement allowance based on unused sick leave accrued

while she was employed at the Agency only because the Agency chose to provide that optional benefit to its employees in its contract with CalPERS.

21. The Agency's reporting of respondent's unused sick leave did not comply with Government Code section 20965 because it included unused sick leave transferred from her previous school district employer, in addition to unused sick leave respondent accrued at the Agency, her employer at retirement. Under section 20965, the Agency could not report to CalPERS for retirement allowance purposes respondent's unused sick leave transferred from Visalia Unified School District to the Agency under Education Code section 45202.

22. The Agency argues that the transferred unused sick leave from respondent's time at Visalia Unified School District was accrued by respondent during the normal course of her employment at the Agency. (Ex. S, pp. Z96-Z100.) But while the Agency credited respondent for unused sick leave she accrued at Visalia Unified School District, which she could use for whatever internal purposes the Agency permitted, respondent did not "accrue" unused sick leave at the Agency except during her employment at the Agency. It is only the hours she accrued as an Agency employee that may be reported to CalPERS for retirement allowance purposes. The unused sick leave from Visalia Unified School District were transferred to the Agency, they were not accrued at the Agency Respondent argues that "accrued by the member during the normal course of the member's employment" means the same thing as "reported for the purpose of increasing the member's retirement benefit," in Government Code sections 20963.5 and 20965. (Ex. S, pp. Z98-Z99.) That interpretation runs contrary to the language of the PERL and the means for funding retirement allowance under the PERL.

///

23. Government Code section 20963.5, which applies by its language to school districts, not to public agencies, expressly allows as sick leave for retirement allowance purposes "*any sick leave transferred to that employer pursuant to Section 44979, 45202, 87783, or 88202 of the Education Code.*" (Italics added.)

24. Government Code section 20965, the statute applicable to public agencies and their miscellaneous member employees has no such provision. It is Government Code section 20965 that applies here.

25. The reason for the omission of that provision in section 20965 is that the benefits accorded miscellaneous members of the Agency are a matter of optional contractual provisions included in the contract between the Agency and CalPERS. Employers of miscellaneous members, unlike the employers of school district members, do not pay into the pension system for unused sick leave benefits unless they contract for those benefits for their members, and they are limited by the terms of the contract. CalPERS policy allows reporting of transferred unused sick leave among school employers because school employers are considered a single employer and they share assets and liabilities; however, the policy does not extend to contracting agencies, which are separate entities. Therefore, even based on the versions of the statutes prior to 2020, the Agency was not permitted to report transferred unused sick leave to CalPERS.

26. The Agency did elect to have a contractual provision with CalPERS allowing benefits for unused sick leave. But the contract between the Agency and CalPERS does not provide for benefits for unused sick leave transferred from a school district under the Education Code. Instead, it explicitly elects to be subject to Government Code section 20965, which, unlike sections 20963 and 20963.5, does not make certifiable to CalPERS unused sick leave transferred to the Agency from a prior

employer. If the Agency had not contracted for Government Code section 20965 service credit for accrued sick leave, it would not be able to report any unused sick leave to CalPERS, let alone report transferred unused sick leave.

27. The difference between section 20965 and sections 20963 and 20963.5 must be considered, according to settled rules of statutory interpretation, a deliberate considered act of the Legislature, which could have included transferred unused leave in section 20965 but chose not to do so. "A statute must be construed in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts. [Citations]." (*People v. Hull* (1991) 1 Cal.4th 266, 272.)

28. Therefore, transferred unused sick leave must be considered "reported for the purpose of increasing the member's retirement allowance, which may not be certified by the agency." (Gov. Code, § 20965.) Respondent's argument that, because 20965 is silent and does not expressly prohibit the Agency from reporting transferred unused sick leave, it must be allowed. (Ex. S, p. Z103.) In view of (a) what the statute explicitly allows, (b) the rationale for not allowing transferred unused sick leave, and (c) the deliberate difference between Government Code section 20965 and sections 20963 and 20963.5, respondent's argument fails.

29. Respondent argues the transferred unused sick leave was not reported to increase respondent's retirement allowance, citing Education Code section 45191, subdivision (a)(1), which entitles a school district's classified employees 12 days leave of absence for illness or injury. (Ex. S, pp. Z99-Z100.) That Education Code section is, however, irrelevant to whether the Agency may certify to CalPERS unused sick leave transferred from a school district for retirement allowance purposes.

///

30. Respondent also argues that the lack of a reference in Government Code section 20965 to certifying transferred unused sick leave to CalPERS demonstrates the Legislature only intended to deny the right to include transferred sick leave “to local members in fields unrelated to education,” and not to “an educational JPA.” (Ex. S, Z103.) There is no support in the plain language or in the legislative history of section 20965 for respondent’s interpretation. And in the context of sections 20963 and 20963.5, respondent’s position is untenable.

31. Respondent argues that the applicable PERL sections should be liberally construed in favor of respondent. (Ex. S, p. Z104.) There being no ambiguity or uncertainty in the statute’s language, there is no need to construe the language to mean anything other than what it says. Even if there were, an interpretation in favor of allowing the Agency to certify to CalPERS respondent’s transferred unused sick leave would ignore the legislative history of the relevant PERL sections and do violence to the statutory scheme for funding retirement allowance payments. And as the Agency points out, “the California Court of Appeal has stated that the “administrative board’s interpretation of the Public Employees’ Retirement Law is accorded great weight unless clearly erroneous,” (citing *City of Fremont v. Bd. of Admin.* (1989) 214 Cal.App.3d 1026, 1033). (Ex. S, p. Z105.) CalPERS’s interpretation of the PERL in this case is correct.

32. Moreover, contrary to the Agency’s arguments, the Education Code sections concerning transferring unused sick leave, and the PERL sections governing service credit, are not inconsistent and do not require harmonizing, nor are the Education Code sections more specific than those of the Government Code. (See ex. S, pp. Z105-Z106.) Each Code governs different uses to which transferred leave may be put. The Legislature is deemed to have recognized this when it explicitly allowed

transferred unused sick leave to be certified for retirement allowance in the case of school district employees, as reflected in Government Code section 20963.5. If Education Code sections allowing such transfers automatically applied to CalPERS, the language in Government Code section 20963.5 allowing certification for transferred leave would be unnecessary. It is presumed that the Legislature chooses statutory language deliberately. (See, e.g., *Schmidt v. Southern California Rapid Transit District* (1993) 14 Cal.App.4th 23; see also *People v. McGuire* (1993) 14 Cal.App.4th 687.)

33. The Agency improperly reported to CalPERS respondent's unused sick leave days accrued prior to her employment at the Agency. CalPERS erroneously paid benefits based in part on that improper reporting. CalPERS acted as the PERL authorizes and requires, by auditing and correcting respondent's total service credit and by seeking to recapture amounts it overpaid. The effect of the provisions determining how unused sick leave is to be treated as well as allowing CalPERS to correct mistakes is that a retiree is not entitled to receive any more of a retirement allowance than allowed by law.

CALPERS'S NEW RETIREMENT ALLOWANCE CALCULATIONS

34. CalPERS did not offer evidence or statutory support for the method it chose to correct its calculation of Dr. Grumbles' service credit, i.e., deducting sick leave that Dr. Grumbles used while employed by the Agency from sick leave accrued at the Agency, rather than from sick leave transferred to the Agency from Visalia Unified School District.

35. The Agency reported a total of 250.56 days of unused sick leave to CalPERS, which represents the sum of 193.06 days of transferred sick leave and 87.00

days of sick leave accrued at the Agency, for a total of 280.06 days of sick leave, less 29.50 days of sick leave Dr. Grumbles used while employed at the Agency.

36. On May 16, 2022, CalPERS reduced Dr. Grumbles' days of total unused sick leave by 193.06 days, from 250.56 days to 57.50 days. (Ex. M, p. B98).

37. Complainant introduced no evidence to show any PERL or CalPERS directive instructing the Agency how to deduct used sick leave from unused sick leave, i.e., whether to deduct it from the sum of sick leave transferred from a previous employer and sick leave accrued through Agency employment, or first from the transferred sick leave and only then from sick leave accrued at the Agency.

38. Director of Operations and Fiscal Management at the Agency, Susan Weiss, stated that she had received no guidance from CalPERS directing the Agency how to deduct unused sick leave. Staff Services Manager I of CalPERS' Retirement Administration and Support unit, Ms. Moritz, testified she was unaware of any statute in the PERL governing how an employee may apply sick leave within their agency.

39. Complainant offered no justification on this record for not deducting the sick leave that Dr. Grumbles used from the sick leave she first accrued and then transferred from Visalia Unified School District, rather than from the sick leave she later accrued at the Agency.

40. Deducting the 29.50 days of used sick leave from Dr. Grumbles' 193.06 days of transferred sick leave would leave a balance of 163.56 days of transferred unused sick leave. CalPERS may eliminate those 163.56 days from its calculation of benefits to which Dr. Grumbles is entitled. But Dr. Grumbles remains entitled to the full 87.00 days of Agency-accrued sick leave, rather than the 57.50 days CalPERS claims she is entitled to. CalPERS must reinstate, for retirement allowance calculation purposes,

29.50 days of Dr. Grumbles' unused sick leave accrued through her employment with the Agency.


ORDER

The appeal of respondents Dr. Grumbles and the Agency is denied in part and affirmed in part.

CalPERS correctly determined that Dr. Grumbles' service credit may not, under the PERL, be based on unused sick leave hours transferred from Visalia Unified School District to the Agency. CalPERS may reduce Dr. Grumbles' monthly retirement allowance accordingly, and may recapture any overpayments it has made to Dr. Grumbles in excess of amounts allowable under the PERL.

When recalculating Dr. Grumbles' retirement allowance, CalPERS shall subtract Dr. Grumbles' 29.50 used sick leave days from the 193.06 sick leave days transferred from Visalia Unified School District, not from the sick leave days Dr. Grumbles accrued while at the Agency.

DATE: **06/09/2023**


[Howard W. Cohen \(Jun 9, 2023 12:09 PDT\)](#)

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings