

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

The County of Napa (Respondent County) is a public agency that entered into a contract with CalPERS, effective January 1, 1949, to provide retirement benefits for its eligible employees. In October 1989, Respondent County amended its retirement contract with CalPERS, providing that “persons compensated on an hourly and/or per diem basis hired on or after May 1, 1969” shall not become CalPERS members. In April 2003, Respondent County again amended its contract with CalPERS, removing the exclusion from membership of “persons compensated on an hourly and/or per diem basis.”

Deborah Geske (Respondent) began employment with Respondent County on August 14, 1990 as a Correctional Officer I – Extra Help. She worked in this position until July 5, 1991 and was compensated on an hourly basis. At the time, County extra help employees worked on an on-call, standby or temporary basis. Their positions were not budgeted or fully funded; and they were not guaranteed to work a certain number of hours. Respondent was not offered CalPERS membership during this time, and the County excluded her from CalPERS membership under the retirement contract exclusion for “persons compensated on an hourly and/or per diem basis” then in effect pursuant to the 1989 Amendment.

On July 6, 1991, Respondent was appointed to a full time, permanent salaried position as a Correctional Officer I with the County. She became a CalPERS member by virtue of this employment.

On December 1, 2020, Respondent submitted a Request for Service Credit Cost Information – Service Prior to Membership for time she was employed as a Correctional Office I – Extra Help and compensated on an hourly basis (January to July 1991).

On April 27, 2021, CalPERS initially informed Respondent and Respondent County that she was eligible for CalPERS membership from January to July 1991 because she had worked over 1,000 hours in the 1990/1991 fiscal year. Respondent County disputed this determination, and submitted additional documents for consideration including the 1989 Amendment to its contract with CalPERS.

On June 2, 2021, CalPERS issued an amended determination denying Respondent’s request to purchase service credit. CalPERS determined that Respondent was ineligible for membership because her hourly position was excluded under the County’s contract with CalPERS at the time.

Respondent appealed the 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 March 7, 2024. Respondent represented herself at hearing. Respondent County was represented by counsel 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 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, CalPERS staff testified about CalPERS' membership review, the determination made regarding Respondent's request to purchase service credit, and CalPERS' contractual hourly exclusion process and policies.

Respondent County's Human Resources staff testified at hearing that the County's temporary employees compensated on a *salaried* basis are not excluded from CalPERS membership. Employees compensated on an *hourly* basis were excluded based on the contractual hourly exclusion provision pursuant to its contract with CalPERS until the 2003 contract amendment was executed.

Respondent testified that her hours were consistent with a "full-time" position, that she met the necessary criteria for membership, and that she was not informed of her exclusion from CalPERS membership from January to July 1991. She also testified that Respondent County officials had informed her that she could purchase service credit for the relevant period.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found that from January through July 1991, the County's retirement contract with CalPERS specifically excluded Respondent because she worked in a position for which she was compensated on an hourly basis. The ALJ further found that while Respondent did work more than 1,000 hours in the 1990/1991 fiscal year, she was excluded from membership because she was an hourly employee. The ALJ found that the hourly employee exclusion in Respondent's contract with CalPERS was a valid exclusion that barred Respondent from obtaining membership from January to July 1991. Finally, the fact that Respondent County officials told Respondent she was eligible to purchase service credit was unavailing because CalPERS must follow the law regardless of the County's promises.

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

June 12, 2024

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