

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal Regarding Final Compensation
Calculation of:**

**PRISCILLA A. DICHOSO and REDWOOD CITY SCHOOL
DISTRICT, Respondents**

Agency Case No. 2023-0935

OAH No. 2024070538

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 14, 2024, from Sacramento, California.

Cristina Andrade, Senior Attorney, represented complainant Brad Hanson, Chief of the Employer Account Management Division of the California Public Employees' Retirement System (CalPERS).

Respondent Priscilla A. Dichoso (respondent) appeared without an attorney.

Jenell Van Bindsbergen, Attorney at Law, represented the Redwood City School District (the District).

Evidence was received, the record closed, and the parties submitted the matter for decision on November 14, 2024.

ISSUE

Whether the payrates reported by the District on behalf of respondent can be used in the calculation of her final compensation for purposes of determining her CalPERS retirement allowance.

FACTUAL FINDINGS

1. The District contracts with CalPERS to provide retirement benefits to its eligible employees. Pursuant to that contract, the District must comply with the Public Employees' Retirement Law (PERL) and its associated regulations.

2. Respondent established membership with CalPERS in 1997 through a different employer. She subsequently worked as the Chief Business Official (CBO) for the District from July 2018 until she retired. In March 2022, she applied for service retirement with a requested retirement date of July 1, 2022. At the time of her retirement, she was a state miscellaneous school member of CalPERS through her employment of the District.

Calculating Retirement Benefit Amount

3. Under the PERL, CalPERS calculates a member's retirement allowance based on a formula that includes three components: (1) the member's age at retirement; (2) the member's length of service; and (3) the member's final compensation. Here, respondent's age and length of service are not in dispute. The

issue to be determined relates to her final compensation. Specifically, CalPERS contends respondent's final compensation, as reported by the District, was not "compensation earnable" as defined in the PERL and its associated regulations. Respondent and the District disagree.

4. As relevant to respondent's employment, "compensation earnable" includes her "payrate" plus other special compensation. "Payrate" means "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules." (Gov. Code, § 20636.1, subd. (b)(1).) By regulation, a payrate "shall be limited to the amount listed on a pay schedule." (Cal. Code Regs., tit. 2, § 570.5, subd. (a).)

5. Among other things, such pay schedules must identify the position title for every employee position and show the payrate for each identified position, either as a single amount or as multiple amounts within a range. (Cal. Code Regs., tit. 2, § 570.5, subd. (a)(2), (3).) The pay schedules must also be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website, and they must not reference another document in lieu of disclosing the payrate. (*Id.*, subd. (a)(5), (8).)

6. If an employer's pay schedule does not meet the regulatory requirements described above, CalPERS may, in its sole discretion, "determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant." (Cal. Code Regs., tit. 2, § 570.5, subd. (b).) The information CalPERS may consider includes, as relevant to this matter, "[d]ocuments approved by the employer's governing body in accordance with requirements of public meetings laws and

maintained by the employer” and “[l]ast payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue.” (*Id.*, subd. (b)(1), (2).)

Respondent’s Compensation

7. The District’s Superintendent, John Baker, Ed.D., testified at hearing. He explained the District first hired respondent as the District’s CBO pursuant to a two-year contract that covered July 30, 2018, through June 30, 2020 (2018 contract). At the time, the District did not maintain published pay schedules for contracted positions. Rather, Dr. Baker negotiated respondent’s salary based on comparable positions in the region and respondent’s experience. The District’s Board subsequently approved the 2018 contract. Respondent’s initial compensation was \$181,125 per year.

8. Because the CBO position was contracted, it was not part of a collective bargaining unit. Nevertheless, the 2018 contract also provided that respondent would receive a salary increase equal to the same percentage increase offered to administrative employees in the Redwood City Administrative Association (RCAA). The RCAA is not a bargaining unit, but at all relevant times it maintained an agreement with the District that its members would receive an annual salary increase equal to the same percentage increase offered to members of the Redwood City Teachers Association, which is a bargaining unit.

9. For the period covering July 1, 2019, through June 30, 2020, RCAA employees received a three-and-a-half percent raise. Respondent therefore also received a three-and-a-half percent raise. Her salary for that year was \$187,464.

10. Near the end of the 2018 contract, Dr. Baker and respondent negotiated her contract renewal. Another local school district was advertising a similar position

with a greater salary. As a result, Dr. Baker offered respondent a salary of \$200,000 per year if she remained with the District. On August 3, 2020, they signed a contract (2020 contract) that included that salary and which again provided that respondent would receive a salary increase equal to the same percentage increase provided to RCAA members.

11. For the first year of the 2020 contract—July 1, 2020, through June 30, 2021—RCAA employees received a four percent raise. The District therefore also provided respondent an immediate four percent increase to her base salary of \$200,000. Consequently, respondent earned \$208,000 between July 1, 2020, and June 30, 2021.

12. For the second year of the 2020 contract—July 1, 2021, through June 30, 2022—RCAA employees received another four percent raise. Respondent therefore also earned that raise, bringing her annual salary for that year to \$216,320. At the time Dr. Baker negotiated respondent's contracts, he did not expect she would retire in July 2022.

Respondent's Calculated Payrate and Retirement Benefit Calculation

13. Angel Gutierrez, an Associate Governmental Program Analyst for CalPERS, testified at hearing. He has worked for CalPERS for approximately 20 years and currently works in the Compliance Review Unit of the Employer Account Management Division. He reviewed respondent's CalPERS information and history to prepare for this hearing.

14. Mr. Gutierrez confirmed that during respondent's retirement application process, the District reported her salary to CalPERS consistent with the 2018 and 2020

contracts. CalPERS requested the District's publicly available pay schedules for 2018 through 2022. The District did not provide any pay schedule for the CBO position.

15. Mr. Gutierrez explained that CalPERS determined respondent's salary, as reported by the District, did not comply with the PERL and its associated regulations because it did not include a payrate that was consistent with a publicly available pay schedule. Therefore, CalPERS exercised its discretion to consider other information when determining respondent's payrate. Specifically, CalPERS considered information from her most recent employer that maintained publicly available pay schedules, the San Mateo County Office of Education. Based on that information, on July 1, 2022, CalPERS sent respondent a letter informing her of her monthly retirement benefit. The letter explained, in relevant part, that the monthly benefit "will be adjusted if additional information is reported by your employer."

16. The District subsequently contacted CalPERS to inquire whether CalPERS had calculated respondent's retirement benefit based on her salary in the 2018 and 2020 contracts. In response, in early October 2022, CalPERS again requested the District's publicly available pay schedules for the CBO position between 2018 and 2022.

17. On October 7, 2022, the District provided CalPERS with respondent's 2018 and 2020 contracts. Because the contracts referenced RCAA pay increases, on October 11, 2022, CalPERS requested the District's salary schedules for RCAA positions between 2018 and 2022. The District provided those schedules, none of which included the CBO position.

18. CalPERS again determined that respondent's salary in the 2018 and 2020 contracts did not comply with the PERL and its associated regulations because it did

not include a payrate that was consistent with a publicly available pay schedule. Therefore, CalPERS again exercised its discretion to consider other information when determining respondent's payrate. Specifically, CalPERS reviewed the RCAA pay schedules, which identified seven salary steps for several management positions, including the Executive Director (ED). For the period beginning July 1, 2018, the ED's Step 6 salary was \$178,953 and the Step 7 salary was \$183,427.

19. Pursuant to the 2018 contract, respondent's salary as of July 2018 was \$181,125, which fell between the ED's Step 6 and Step 7 amounts. Therefore, Mr. Gutierrez explained CalPERS accepted that salary as respondent's "starting point" payrate. CalPERS then calculated respondent's subsequent annual salaries by applying the pay raises she received consistent with the RCAA annual raises. Specifically, for the year starting July 1, 2019, CalPERS applied a three-and-a-half percent raise. It then applied a four percent raise for each of the next two years. Using that method, CalPERS calculated respondent's annual payrate for her four years with the District to be \$181,125 her first year, \$187,464 her second year, \$194,963 her third year, and \$202,761 her fourth year. It used that final year's salary when determining her benefit amount.

20. After respondent retired, the District hired Rick Edson as its CBO. Mr. Edson testified at hearing. After he started as the CBO, he recognized that the District did not maintain a publicly available pay schedule for the CBO position. He therefore created salary schedules for the CBO position from 2018 through 2023, which the District subsequently provided to CalPERS. Each schedule includes a note indicating its effective date was July 1, 2022, and that the District's Board approved it on November 16, 2022. CalPERS did not consider the pay schedules when determining respondent's payrate because they did not exist during her employment with the District.

21. When calculating respondent's payrate, CalPERS did not include the salary increase she received in the 2020 contract because other members of the RCAA did not receive that increase. Mr. Gutierrez explained that, although the CBO position was not part of the RCAA, the PERL provides that a single employee cannot be a group or class. Rather, single employees are grouped together with other employees who share similar job duties, work locations, collective bargaining units, or other logical work-related groupings.

22. Based on the payrates calculated above, CalPERS adjusted respondent's retirement benefit and notified her of the change via letter dated November 2, 2022. Respondent requested that CalPERS recalculate her benefit via letter dated December 14, 2022. In her letter, she argued CalPERS inappropriately relied on the ED's salary when determining her payrate.

23. On December 29, 2022, CalPERS sent respondent a Retirement Allowance Formal Determination letter identifying the reasons for its decision to disallow the compensation reported by the District. The letter explained, in relevant part:

The District was unable to provide publicly available pay schedules that included the Chief Business Official (CBO) position. As a result, the reported pay rates are noncompliant. Additionally, the reported pay rates included increases that were not available to the next closely situated group or class, which is identified as the RCAA. Based on the information provided by the District, the increases you received were based only on the contracts that you signed for the CBO position. These increases are noncompliant

with Gov. Code section 20636.1 and therefore cannot be used to calculate your benefit.

As a result, CalPERS limited your pay rates to the base payrate on your original contract and included the annual increases that were received by the RCAA group, as authorized under CCR section 570.5(b)(2).

24. On January 26, 2023, respondent appealed CalPERS's determination. In her appeal, she raised five substantive arguments:

(1) Chief Business Official (CBO) position must be used for my pension calculation, NOT the Executive Director position;

(2) Chief Business Official (CBO) position is NOT the same or similarly-situated as Directors or Other Administrator/Management Positions in the District;

(3) The information regarding the Chief Business Official's salary and benefits has always been available to the public, contrary to CalPERS allegation that the CBO compensation/pay rates were not publicly available;

(4) The Chief Business Official (CBO) compensation and benefits while higher than the regular management employees in the Redwood City Administrators Association (RCAA), were NOT in any way outrageous, spiked or out-of-the-norm in San Mateo County; [and]

(5) CalPERS act of disallowing a portion of my actual compensation for pension calculation purposes is wrong, unfair, unconscionable and prejudicial.

Respondent's Evidence and Argument

25. Respondent testified at hearing. She echoed her arguments raised in her written appeal. She believes CalPERS inappropriately limited her salary to the RCAA increases. She contends CalPERS should not have excluded her raise, as reflected in the 2020 contract, when determining her payrate. When her 2018 contract ended, she was free to leave the District and seek employment elsewhere. Alternatively, she was free to negotiate a new contract with the District, which she did. At the time, another local school district was advertising a CBO position with a salary of up to approximately \$205,000. She believes CalPERS should recalculate her payrate based on her final salary, which was \$216,320 per year. She noted the District's Board approved her 2018 and 2020 contracts in public meetings, which demonstrate that her salary was not hidden from public view.

LEGAL CONCLUSIONS

1. CalPERS is governed by the PERL. The purpose of the PERL is "to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end provide a retirement system consisting of retirement compensation and death benefits." (Gov. Code, § 20001.)

2. CalPERS's interpretation of the PERL is entitled to deference because "as the agency charged with administering the PERL, [Cal]PERS has expertise and technical knowledge as well as an intimate knowledge of the problems dealt with in the statute and various administrative consequences arising from particular interpretations." (*City of Pleasanton v. Bd. of Administration of the California Public Employees' Retirement System* (2012) 211 Cal.App.4th 522, 539.)

Burden of Proof and Applicable Law

3. The party asserting the affirmative in an administrative action has the burden of going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) CalPERS has the burden of proving a prima facie case in support of its final determination concerning respondent's retirement allowance. Once that has occurred, the burden shifts to respondent to establish that she is entitled to the retirement allowance she seeks. (*Id.* at p. 1047; *Harmon v. Bd. of Retirement* (1976) 62 Cal.App.3d 689, 691.)

4. Each party must meet its burden by a preponderance of the evidence. (Evid. Code, § 115.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) To be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

5. CalPERS is a prefunded defined benefit retirement plan. (*Oden v. Bd. of Administration* (1994) 23 Cal.App.4th 194, 198.) The formula for determining a member's retirement benefit considers: (1) the member's age at retirement; (2) the member's length of service; and (3) the member's final compensation. "Compensation" means, "the remuneration paid out of funds controlled by the employer in payment for

the member's services performed during normal working hours." (Gov. Code, § 20630, subd. (a).) It also includes time during which the member is excused from work because of holidays, sick leave, industrial disability leave, vacation, compensatory time off, or leave of absence. (*Ibid.*)

6. Employers must report member compensation to CalPERS. When they do so, compensation "shall not exceed compensation earnable, as defined in Sections 20636 and 20636.1, respectively." (Gov. Code, § 20630, subd. (b).)

7. For CalPERS school members, "compensation earnable" includes the "payrate" and any special compensation. (Gov. Code, § 20636.1, subd. (a).) "Payrate" means:

[T]he normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. For purposes of this part, for classified members, full-time employment is 40 hours per week, and payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(Gov. Code, § 20636.1, subd. (b)(1).)

8. The term “group or class of employment” means “a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping.” (Gov. Code, § 20636.1, subd. (e)(1).) A single employee is not a group or class. (*Ibid.*)

9. The PERL also provides:

Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(Gov. Code, § 20636.1, subd. (e)(2).)

10. Employees not in a group or class of employment may request an exception from the average increase limitations within Government Code section 20636.1, subdivision (e)(2). (Cal. Code of Regs., tit. 2, § 572.) Any such request must be made in writing to the CalPERS Customer Account Services Division within 30 days after the member first receives CalPERS’s estimate of benefits payable. (*Ibid.*)

11. Pursuant to the California Code of Regulations, when determining “compensation earnable” under Government Code section 20636.1:

[P]ayrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer’s governing body in accordance with requirements of applicable public meetings laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer’s internet website;
- (6) Indicates an effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and

(8) Does not reference another document in lieu of disclosing the payrate.

(Cal Code Regs., tit. 2, § 570.5, subd. (a).)

12. If an employer does not maintain a pay schedule that complies with the requirements listed above, CalPERS, "in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant." (Cal Code Regs., tit. 2, § 570.5, subd. (b).) The information CalPERS may consider includes:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;

(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;

(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position; [and]

(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

Cause To Deny Respondent's Appeal

13. CalPERS proved that the salary information the District reported for respondent did not qualify as "compensable earning" for purposes of calculating her retirement benefit because the District did not pay her pursuant to a publicly available pay schedule. (Gov. Code, §§ 20630, 20636.1, subd. (b)(1); Cal. Code Regs., tit. 2, § 570.5, subd. (a).) The District did not approve its pay schedule for the CBO position until November 16, 2022, more than four months after respondent retired from the District.

14. Respondent's 2018 and 2020 contracts did not qualify as publicly available pay schedules because: (1) they did not identify the position title for every employee position; (2) they were not posted at the District's office nor were they immediately accessible and available for public review from the District during normal business hours or posted on the District's internet website; and (3) they referenced another document, namely the documents providing for RCAA pay raises, in lieu of disclosing the full payrate. (Cal. Code Regs., tit. 2, § 570.5, subd. (a)(2), (5), and (8).)

15. CalPERS further proved it validly exercised its discretion to determine respondent's payrate by considering other relevant information, including the pay schedules for the District's ED and other administrative staff and respondent's 2018 and 2020 contracts. (Cal. Code Regs., tit. 2, § 570.5, subd. (b).)

16. CalPERS proved respondent's raise pursuant to the 2020 contract exceeded the average increase in compensation earnable during the same period reported by the District for all employees in the same membership classification, namely the RCAA employees. (Gov. Code, § 20636.1, subd. (e)(2).) CalPERS validly determined that respondent's salary increase should be measured against those of the

District's RCAA employees because a single employee is not a group or class and those were the employees who most closely shared similarities in job duties, work location, or other logical work-related grouping with respondent. (Gov. Code, § 20636.1, subd. (e)(1), (2).)

17. Neither respondent nor the District timely requested an exception to the average increase procedure outlined in Government Code section 20636.1. (Cal. Code Regs., tit. 2, § 572.)

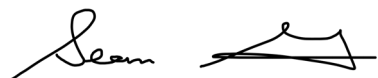
Conclusion

18. For the reasons stated above, the 2020 contract payrates reported by the District on behalf of respondent cannot be used in the calculation of respondent's final compensation for purposes of determining her CalPERS retirement allowance. CalPERS validly determined her payrate based on other permissible sources, including her 2018 contract pay, her annual raises linked to RCAA raises, and the pay schedule for the District's ED in the same year respondent began her employment with the District.

ORDER

Respondent Priscilla A. Dichoso's appeal of CalPERS's December 29, 2022 Retirement Allowance Formal Determination is DENIED.

DATE: December 17, 2024



SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings