

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

On September 16, 1996, by virtue of her employment with the State of California, Department of Food and Agriculture, Pamela Hullinger (Respondent) became a member of CalPERS. On January 17, 2006, Respondent was hired by the University of California, Davis (Respondent University) as an Academic Administrator VII. At the time of her hire, Respondent established membership with University of California Retirement System (UCRS) through her employment with Respondent University.

CalPERS and UCRS are reciprocal retirement systems. Reciprocity is an agreement among public retirement systems to allow members to move from one public employer to another public employer within a specific amount of time without losing valuable retirement and related benefit rights. Respondent has reciprocity rights for concurrent retirement with CalPERS and UCRS. She established reciprocity between CalPERS and UCRS effective January 17, 2006.

On November 13, 2019, Respondent applied for service retirement with CalPERS, with an effective retirement date of January 3, 2020. She began receiving her retirement allowance on or around April 1, 2020.

As part of the retirement process, the UC Office of the President (UCOP) submitted reports of Respondent's compensation to CalPERS. CalPERS reviewed the documentation to determine the correct final compensation amount to use to calculate Respondent's monthly service retirement benefit. On February 4, 2020, UCOP affirmed Respondent's final average compensation of \$19,918.66 per month and checked the "no" box to indicate the salary did not include "special compensation."

CalPERS attempted to verify the compensation, but the only publicly available pay schedule for an Academic Administrator VII showed the top monthly compensation as \$13,449.83. Respondent University and UCOP were unable to provide information to verify that Respondent's \$19,918.66 monthly compensation was pensionable under the legal requirements in the Public Employees' Retirement Law (PERL). CalPERS sent a letter to Respondent dated April 9, 2020, informing her it had reviewed her account and attempted to verify her compensation. Because her compensation exceeded the amounts on the publicly available pay schedule, and the excess amount did not fit within CalPERS' definition of pensionable "special compensation," it was excluded from the calculation of Respondent's retirement benefit. The letter also informed Respondent of her appeal rights.

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 December 7, 2021. Respondent represented herself at the hearing. Respondent University 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 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 Staff testified about reciprocal retirement, and explained that when a member retires for reciprocal service, she must retire simultaneously with CalPERS and, in this case, UCRS. Respondent receives a retirement benefit amount from CalPERS and a separate amount from UCRS. Respondent's CalPERS retirement allowance is based on her CalPERS service credit, but the compensation used to determine her allowance is based on her compensation earnable while working for UCRS. Reciprocal entities apply their own rules to calculate the member's retirement benefit, but those rules do not apply to CalPERS. CalPERS is bound by its own statutes and regulations, so although some compensation may qualify as compensation earnable under reciprocal system rules, that same compensation may not qualify as compensation earnable under the PERL. CalPERS' determination has no effect on Respondent's retirement benefit amount as calculated by UCRS.

Staff then explained why the compensation at issue was excluded by CalPERS. To qualify as compensation earnable for retirement, the compensation must qualify as either pay rate or special compensation. Pay rate is the normal rate of pay paid according to a publicly available pay schedule. (Government Code section 20636.) Special compensation is the compensation paid in addition to pay rate, and only the items included in Title 2, California Code of Regulations section 571 (Section 571) qualify as special compensation.

Respondent's final 12-month average compensation at retirement was \$19,918.66. After receiving this information from UCOP, CalPERS attempted to confirm Respondent's salary on Respondent University's publicly available pay schedules but was unable to do so. Rather, the publicly available pay schedule showed the top rate of pay for Respondent's position was \$13,449.83.

CalPERS inquired about the discrepancy, and UCOP forwarded information to CalPERS regarding Respondent's compensation. UCOP explained Academic Administrator VIIs are paid "above scale" because these individuals have the academic and professional record to be "faculty" in the UC system, which has a different (and higher) pay scale. The position comes with such a high amount of administrative and program management duties, it cannot be considered in the professorial salary scale. For the UC to successfully hire into these positions and offer competitive salaries, it must hire "off scale," which is an amount significantly higher than the published salaries for high-level Academic Administrators. The \$19,918.66 was not on Respondent University's salary schedule, but was paid in addition to the maximum amount on the salary schedule for Respondent's position.

Staff further explained that the pay did not qualify as special compensation because it was not an item listed in Section 571(a), nor did it comply with the requirements listed in

Section 571(b). Because the pay does not qualify as pay rate or special compensation, it must be excluded from Respondent's final compensation.

The Assistant Vice Provost of Academic Affairs (Vice Provost) at Respondent University testified in support of Respondent. Vice Provost explained the publicly available pay scales for high-level administrator positions are not competitive enough for the UC system to attract the caliber of executives and academics needed in a "world-class university." When a UC makes an offer to a potential employee, they offer a "market salary rate," to reflect the position duties and the market regardless of the pay scale.

Vice Provost also explained that the UC's Academic Personnel Manual provides parameters for using off-scale salaries. The primary reason for off-scale is to meet market conditions. Neither UC nor UCRS considers off-scale salaries to be "special pay." Rather, they are "regular compensation." As a public university, the UC maintains a website that lists the compensation of its employees to remain fiscally transparent. That site shows Respondent's "total compensation," and does not separate her "regular compensation" from the off-scale amount she received.

Respondent testified on her own behalf. Until she retired, Respondent did not know that CalPERS would exclude some of her compensation from the calculation of her retirement benefit. Hence, Respondent's monthly retirement benefit is \$1,200 less than she anticipated.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that although the publicly available pay schedule for Respondent's Academic Administrator VII position meets all of CalPERS requirements, the pay schedule does not include the full amount of compensation paid to Respondent. So, the compensation paid in excess of the amounts listed on the pay schedule cannot count as pay rate. Plus, the amounts do not qualify as special compensation because they are not listed in Section 571, and were not approved by the UC's board or governing body. Accordingly, the disputed amounts do not count as compensation earnable for the purpose of Respondent's CalPERS retirement.

The ALJ concluded that CalPERS correctly determined that the off-scale pay should be excluded from Respondent's final compensation.

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

February 15, 2022

Charles H. Glauberman
Senior Attorney