

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED**

Mary S. Maurer (Respondent) established membership with CalPERS in the 1990's when she was employed by the California Department of Insurance as a Deputy Press Secretary for the Insurance Commissioner. Respondent separated from employment with the Department of Insurance but retained her membership with CalPERS. From 2000 through 2004, Respondent was employed as Field Deputy to a State Assembly Member.

In 2005, Respondent was elected to serve on the Calabasas City Council. She began serving as a full-time City Council member on March 23, 2005. Her service concluded December 15, 2022.

On March 22, 2005, the City submitted to CalPERS a Member Action Request (MAR) form that identified Respondent as a new City employee who was eligible for CalPERS membership. The MAR listed Respondent's position as a full-time "Councilmember;" however, the City failed to check the required Box 19 on the MAR to indicate Respondent was an elected city official, and thus an "Optional Member." Box 19 contained the language: "This person is an Optional Member (e.g., "Elective Officer," "Legislative Employee") who is electing membership. (Please attach appropriate election form AESD-3, AESD-59, or AESD- 229)."

On March 18, 2005, Respondent signed an AESD-59 form titled, "Election of Optional Membership – Elective Officer." That form states, in part:

California Government Code section 20322 provides that an "elective officer" is excluded from membership in [CalPERS] unless he or she files with [CalPERS] an election in writing to become a member.

City personnel did not file the AESD-59 with CalPERS as required. Consequently, CalPERS was unaware of Respondent's status as an elective officer and optional member of CalPERS.

For several years, Respondent's City Council service was her only employment. However, beginning in 2013, Respondent was also employed by CalPERS State employers, the California Department of Toxic Substances Control (full-time from September 2013 through January 2017), and the California Conservation Corps (full-time from February 2017 through December 2022).

In 2020, Respondent began considering retirement from the California Conservation Corps and from City Council. On October 2, 2020, Respondent requested CalPERS provide her with a Retirement Allowance Estimate Letter for a projected retirement date

of September 1, 2021. She listed the California Conservation Corps as her employer and her position title as District Director. She also listed her City employment but did not include her position title.

On October 5, 2020, CalPERS sent Respondent a Retirement Allowance Estimate Letter using a projected retirement date of September 1, 2021. CalPERS calculated Respondent's unmodified monthly retirement allowance as \$3,907.14, based on 19.795 years of service credit and her employment with the State and the City. CalPERS made its calculation by applying the final compensation from all Respondent's employers to her total years of service credit with the State and the City, rather than separately applying Respondent's final compensation from the City to her City service credit.

The Public Employees' Retirement Law (PERL) (specifically, Gov. Code, § 20039) requires that a local elective member's final compensation be based on the member's highest average annual compensation during the period of service in the elective office. However, in October 2020, CalPERS was unaware of Respondent's elective officer status since the city had failed to file Respondent's AESD-59 with CalPERS as required.

In 2022, Respondent again began contemplating retirement. She requested a retirement allowance estimate from CalPERS. On April 14, 2022, CalPERS provided Respondent with a Retirement Allowance Estimate Letter with a projected retirement date of January 1, 2023. CalPERS calculated Respondent's unmodified retirement allowance as \$4,533.09, based on 21.173 years of service credit and her employment with the State and the City. CalPERS did not apply Government Code section 20039 to Respondent's service with the City.

In August 2022, Respondent informed her State employer, the California Conservation Corps, that she anticipated retiring on December 15, 2022. Respondent began depleting her residual vacation time through her anticipated retirement date.

On September 30, 2022, CalPERS received the Election of Optional Membership - Elective Office (AESD-59) form Respondent signed in 2005 regarding her service as a City Council official. After receiving the AESD-59 form, CalPERS determined Respondent's final compensation is subject to Government Code section 20039.

On October 20, 2022, CalPERS sent a revised Benefit Estimate Letter to Respondent reporting 21.070 years of service credit and an unmodified monthly allowance of \$2,947.93 based on her employment with the State and the City both of which are subject to Government Code section 20039. Respondent began questioning the validity of CalPERS' calculation of her final compensation. CalPERS informed Respondent it had no authority to change the recalculation.

Despite CalPERS' reduced retirement allowance estimate, Respondent chose to submit her Service Retirement Election Application on November 23, 2022, with an effective retirement date of December 15, 2022.

On December 15, 2022, CalPERS sent Respondent a first payment acknowledgment letter confirming her retirement date of December 15, 2022, and her calculated monthly retirement benefit of \$2,920.79. Thereafter, Respondent began receiving monthly retirement benefits.

After she retired, Respondent continued her efforts to convince CalPERS to recalculate her monthly retirement benefit. On July 3, 2023, CalPERS denied Respondent's request for CalPERS to recalculate her retirement allowance by applying her state salary to her service credit earned as an elected City official.

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 July 16, 2024. Respondent was represented by counsel at the hearing.

At the hearing, CalPERS presented testimony from staff which substantiated CalPERS' bases for denying Respondent's request for recalculation of her retirement allowance. Staff noted that CalPERS has over one million members but only about 2,000 employees. Consequently, CalPERS staff cannot continually conduct extensive audits of every member's file. With several thousand contracting agencies that have thousands of job titles and unique benefits, CalPERS depends on employers to report accurate information, including the submission of Election of Optional Membership forms to enroll optional members.

Further, it is the employer's responsibility to report information accurately to CalPERS. In Respondent's case, the City should have checked Box 19 on the MAR and submitted Respondent's signed Election of Optional Membership (AESD- 59) form so CalPERS could have flagged Respondent as an optional member. Because the City failed to report Respondent's membership correctly, CalPERS entered Respondent in its system as regular City employee.

Respondent's membership status was not corrected in the CalPERS system until CalPERS received her Election of Optional Membership (AESD-59 form) on September 30, 2022. After receiving the correct information from Respondent's employer, CalPERS calculated Respondent's retirement allowance as required by Government Code section 20039.

Respondent testified on her own behalf at the administrative hearing. Respondent believes her retirement allowance should be recalculated to reflect the higher (albeit incorrect) estimate amounts because "there should be some compensation" for CalPERS' "failure to manage" her account. Respondent testified that she understood that the City made the mistake of not checking Box 19 on her MAR, but she believes CalPERS should have discovered the mistake. Respondent also testified that if she had been provided correct estimates of her retirement allowance, she "would not have retired" because she could not afford to do so. Respondent believes CalPERS should be equitably estopped from applying Government Code section 20039 in her case.

After considering the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent's current retirement allowance was correctly calculated in compliance with the PERL. The PERL requires that a local elective member's final compensation be based on the member's highest average annual compensation during the period of service in the elective office. Respondent was a local elected official and therefore subject to Government Code section 20039.

The ALJ denied Respondent's request to correct her retirement allowance pursuant to Government Code section 20160. The ALJ noted that, even if the failure to discover Respondent's optional membership until September 30, 2022, could be characterized as a CalPERS "error," it is not a correctable mistake because the correction would provide Respondent with a greater retirement allowance than is authorized by the PERL. The ALJ further held that the doctrine of equitable estoppel cannot be applied to require payment of a larger pension than the law allows.

In the Proposed Decision, the ALJ concludes that Respondent is receiving the correct retirement allowance. As such, her appeal must be denied.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends changing the date on page 10, paragraph 34, of the Proposed Decision from "October 5, 2022", to "October 5, 2020".

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

September 18, 2024

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