

OFFICE OF THE  
PLACER COUNTY COUNSEL

**KARIN E. SCHWAB**  
INTERIM COUNTY COUNSEL

175 Fulweiler Avenue  
Auburn, California 95603  
Telephone: 530-889-4044  
Facsimile: 530-889-4069  
www.placer.ca.gov

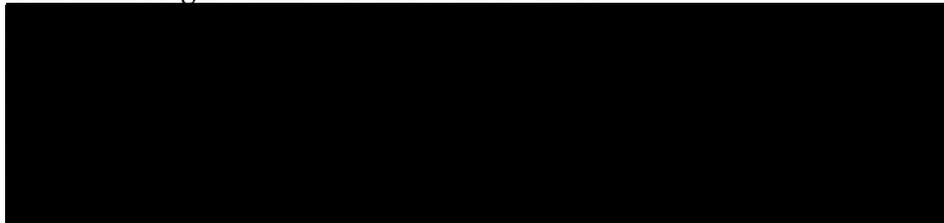
August 23, 2019

*Via U.S. Mail and Electronic Transmission*  
[Renee.Ostrander@calpers.ca.gov](mailto:Renee.Ostrander@calpers.ca.gov) and [Compensation.Appeals@calpers.ca.gov](mailto:Compensation.Appeals@calpers.ca.gov)

Renee Ostrander  
Division Chief  
Compensation Compliance & Review  
Employer Account Management Division  
California Public Employees' Retirement System  
P.O. Box 942715  
Sacramento, CA 94229-2715

Nancy Hao  
Legal Office  
California Public Employees' Retirement System  
P.O. Box 942707  
Sacramento, CA 94229-2707

Re: County of Placer [CalPERS Agency ID: 4088970465] – Longevity Pay  
**CalPERS Legal Office – Ref. No. 2019-0542**



CalPERS Participant – All Placer County Employees and Retirees

**NOTICE OF APPEAL OF CALPERS' DENIAL OF REPORTED COMPENSATION**

Dear Ms. Ostrander:

This letter shall serve as the County of Placer's Seventh Notice of Appeal regarding CalPERS' decision to exclude longevity pay in the calculation of compensation earnable as it relates to the above CalPERS' participant and all other County of Placer employees and County of Placer retirees. [Gov. Code § 20134 and 2 CCR §§ 555-555.4]

Renee Ostrander

Re: County of Placer – Longevity Pay Ordinance – NOTICE OF APPEAL

August 23, 2019

Page 2

---

The County of Placer appeals CalPERS' decision denying reported compensation to the above individuals and on behalf of all employees and retirees. As the issues are the same, the County of Placer herein asserts, as if fully set forth herein, all of the arguments made in its Notice of Appeal dated February 13, 2019, Notice of Appeal dated March 15, 2019, Notice of Appeal dated April 16, 2019, Notice of Appeal dated April 19, 2019, Notice of Appeal dated June 21, 2019 and Notice of Appeal dated July 22, 2019. [See prior appeals previously served for text of issues and arguments.] The County further requests that this appeal be joined with the six prior appeals for hearing purposes as the legal issues are identical.

### **INTRODUCTION:**

To the above employees, CalPERS' has denied reported compensation on the following ground:

“The County’s “Longevity Pay” does not meet the PERL’s exclusive definition of Longevity Pay and is not available to the group or class because it is limited to employees at the top step of the pay range. Accordingly, we excluded this pay from the calculation of your retirement benefits.”

### **PARTIES:**

The parties are the same as identified in the six prior appeals.

### **STATEMENT OF FACTS:**

The County adopts, as if stated in full herein, the statement of facts presented in the six prior appeals.

### **STATEMENT OF LAW:**

The County adopts, as if stated in full herein, the statement of law presented in the six prior appeals.

### **ANALYSIS:**

The County incorporates Issues One through Seven of the six prior appeals as if fully set forth herein.

The County reviewed CalPERS' legal authority supporting its claim that the County's longevity provision at issue in this appeal is not in compliance with 2 CCR §571(b)(2). CalPERS' legal authority does not address the issues in the present case.

CalPERS claims that the longevity pay is not available to all members in the group or class because it is limited to employees at the top step of the pay range. A similar argument was made in *DiCarlo et al. v. County of Monterey* (2017) 12 Cal.App.5<sup>th</sup> 468 and *In Re Huasha L. Liu* (2018) OAH No. 2018100124. However, in both of those cases, the special compensation was a performance bonus or stipend. That is, the special compensation required a subjective analysis as to whether one

individual would get the special compensation. In those two cases, not all individuals could get the same compensation despite working the exact same number of hours because the special compensation was dependent on the employee's level of performance.

Here, the group or class is based on time (i.e. hours worked). The difference is significant. The special compensation at issue is longevity pay. Longevity pay is only concerned with hours worked in excess of 5 years. It has nothing to do with an individual job classification or individual performance. All individuals that work the requisite number of hours get longevity pay without regard to performance or classification. Therefore, CalPERS' analysis of the County's group or class in terms of job classification is in error.

Further, the County attaches Resolution No. 2019-158 of the Board of Supervisors officially stating the County's existing policy as to longevity pay and why the Board of Supervisors considers the group of individuals to be a "logical work-related grouping" as defined in Government Code §20636(e)(1).

As previously briefed, the County has the sole discretion to determine the group or class of employees that receive longevity pay. As long as the grouping is a "logical work-related grouping," then it meets the definition of "group or class" contained in Government Code §20636(e)(1).

When one looks at the group defined by the County, all members receive longevity compensation if they complete the requisite number of hours. If they don't complete the requisite number of hours, the employee *by definition* is not within the group or class defined by the County. If an employee met the requisite number of hours but then was denied longevity pay, then CalPERS argument would have merit. But, of course, that is not the present case.

For some reasons, after 25 years, CalPERS adopted a new interpretation of the County's longevity pay provision that does not analyze the hours worked to determine the group or class, but defines the group or class by the employee's job classification. The County humbly submits that the new interpretation goes beyond the existing legal authority, completely erases the word "logical work-related grouping" from Government Code § 20636(e)(1) and forgets that the special compensation is longevity pay (i.e. pay awarded for hours worked).

### **CONCLUSION:**

For the reasons previously stated in the six prior appeals, the County of Placer respectfully submits that CalPERS' denial of reported compensation herein is incorrect. The County of Placer requests that CalPERS' reconsider its position.

CalPERS' legal authority is distinguishable from the present case. The County has established a time period that is in excess of five years as required by CalPERS definition of longevity pay. Longevity pay is available to all persons that complete the requisite number of hours. The group or class is a *logical* work-related grouping. There is no subjective analysis of whether employees are to receive the longevity pay. If the requisite hours are completed the employee receives longevity pay.

Renee Ostrander

Re: County of Placer – Longevity Pay Ordinance – NOTICE OF APPEAL

August 23, 2019

Page 4

---

The question at hand is: “Why?” After all of the years that CalPERS accepted the County’s longevity pay provision, why does CalPERS now believe that the County’s longevity pay provision is not in accordance with PERL. Do the CalPERS individuals that made the decision truly believe that the County’s group or class is not a *logical* work related grouping? If it is a logical work related grouping, is there any evidence that a single person who qualified for longevity pay did not get it? Does the longevity pay definition specify a time period in excess of five years?

The County believes that somewhere along the way persons at CalPERS decided to extend the decision in *DiCarlo* to every situation involving some performance or bonus stipend that is paid after the employee completes a certain number of steps without analyzing whether the same logic applies to an objectively based longevity pay.<sup>1</sup> However, once the decision was made, the collective at CalPERS could not accept the fact that maybe a mistake was made.

Maybe, just maybe, the County is right.

Very truly yours,

OFFICE OF THE PLACER COUNTY COUNSEL

By:   
Brett D. Holt  
Chief Deputy County Counsel<sup>2</sup>

BDH/bhs

Cc:

Brad Hanson, Asst. Division Chief, Employer Account Management Division, CalPERS

Charles Miller, Manager, Compensation Compliance & Review Unit, CalPERS

Todd Leopold, County Executive Officer, County of Placer

Kate Sampson, Human Resources Director, County of Placer

Andrew Sisk, Auditor-Controller, County of Placer

---

<sup>1</sup> It makes no sense to apply the same logic to longevity pay as longevity pay is objectively determined.

<sup>2</sup> Please note my correct title.

# Before the Board of Supervisors County of Placer, State of California

**In the matter of:**

A Resolution declaring that Placer County created a group or class of employees that was a logical work-related grouping for Placer County to determine when and who would qualify for longevity pay

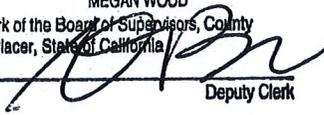
Resolution No.: 2019-158

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held July 23, 2019, by the following vote on roll call:

Ayes: GORE, WEYGANDT, HOLMES, GUSTAFSON  
Noes: NONE  
Absent: NONE  
Abstain: UHLER

THE FOREGOING INSTRUMENT IS A CORRECT  
COPY OF THE ORIGINAL ON FILE IN THIS OFFICE  
ATTEST

MEGAN WOOD  
Clerk of the Board of Supervisors, County  
of Placer, State of California

  
Deputy Clerk

Signed and approved by me after its passage.

  
Chair, Board of Supervisors

Attest:

  
Clerk of said Board

---

## RESOLUTION DECLARING A LOGICAL WORK-RELATED GROUPING FOR THE PAYMENT OF LONGEVITY PAY IN PLACER COUNTY [GC § 20636(e)(1) & 2 CCR 571]

**WHEREAS**, Section 1, of Article XI of the California Constitution provides that the governing body of a county shall provide for the number, compensation, tenure, and appointment of employees.

**WHEREAS**, Section 3, of Article XI of the California Constitution provides that a county may adopt a charter by a majority vote of the electors voting on the question and that the charter is effective when filed with the Secretary of State.

**WHEREAS**, Section 3, of Article XI of the California Constitution provides that the provisions of a charter, adopted pursuant to CA. Const. Art. XI, § 3, are the law of the State and have the force and effect of legislative enactments.

**WHEREAS**, Section 4, of Article XI of the California Constitution requires that county charters shall provide for: ". . . (f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal."

**WHEREAS**, Section 4, of Article XI of the California Constitution provides that charter counties shall have all the powers that are provided by the California Constitution or by statute for counties.

**WHEREAS**, Section 25300 of the California Government Code vests a county board of supervisors with prescribing the compensation of all county officers and provide for the number, compensation, tenure, appointment and conditions of employment of county employees.

**WHEREAS**, on November 4, 1980 the electors of Placer County approved the formation of a county charter pursuant to CA. Const. Art. XI §§ 1, 3 and 4 and that charter was filed with the Secretary of State on December 23, 1980, thereby becoming effective on that date.

**WHEREAS**, Section 301 of Placer County's charter vests the Board of Supervisors with all of the jurisdiction and authority which or which may hereafter be granted by the Constitution and the laws of the State of California or by the Placer County charter.

**WHEREAS**, Section 302 of Placer County's charter vests the Board of Supervisors with the exclusive authority to establish compensation of all of Placer County employees.

**WHEREAS**, it is the labor policy of Placer County, as reflected in Placer County Ordinance §3.12.060 and in collective bargaining agreements, that each permanent employee who has been at step 5 of his or her salary grade for ten thousand four hundred (10,400) paid hours (five years full-time paid service) with Placer County shall receive a one-time five percent increase in his or her current base hourly rate and that the ten thousand four hundred (10,400) hour period shall be calculated from the date the employee begins service at step 5 in that salary grade.

**WHEREAS**, the labor policy of Placer County, as reflected in Placer County Ordinance § 3.12.060 and in collective bargaining agreements, has been substantively the same since December 23, 1994 when the Board of Supervisors adopted Placer County Code §14.3050 (the section that preceded §3.12.060)

**WHEREAS**, from 1994 to the present Placer County and Placer County employees have paid money to the California Public Employees' Retirement System [CalPERS] on the basis that the longevity provision met CalPERS' regulations for special compensation and that longevity pay was to be included in the calculation of compensation earnable, as set forth in 2 CCR § 571.

**WHEREAS**, from 1994 to 2019, CalPERS knew the provisions of Placer County's longevity pay provision based on public agency audits and numerous employee retirement benefit estimates, and during that time CalPERS accepted the employer and employee payments related to longevity pay and included longevity pay in the calculation of compensation earnable for Placer County employees.

**WHEREAS**, in the beginning of 2019, CalPERS began denying the reported compensation of Placer County employees (even though the longevity pay provision had not changed in 25 years) by specifically excluding longevity pay from claims of compensation earnable on the basis that it did not meet CalPERS definition of Longevity Pay and that it was limited to employees at the top step of the pay range.

**WHEREAS**, CalPERS defines Longevity Pay in 2 CCR § 571(a)(1) as follows: "Longevity Pay – Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years."

**WHEREAS**, CalPERS definition of Longevity Pay had not substantively changed since its inception in July 1994.

**WHEREAS**, the Placer County is presently appealing CalPERS' recent change in its interpretation of Placer County's longevity provision.

**WHEREAS**, the Board of Supervisors asserts all constitutional and statutory authority to establish compensation for its employees and the group or class of employment that entitles each employee to compensation.

**WHEREAS**, the Board of Supervisors, based on its constitutional and statutory authority, has paid longevity pay to employees since 1994 based on a logical work related grouping as set forth herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors, County of Placer, State of California, certifies that:

1. To receive longevity pay in Placer County, PPEO Represented, Management, Confidential and Unclassified Nonmanagement employees must complete a certain minimum period of time exceeding five years with Placer County in the form of ten thousand four hundred paid hours (five years of full-time paid service) beginning from the date the employee begins service at step 5.
2. All PPEO Represented, Management, Confidential and Unclassified Nonmanagement employees that complete these 10,400 paid hours receive longevity pay without regard to the performance level of the employee.

3. Persons that complete 10,400 paid hours beginning from the date the employee begins service at step 5 are a group or class of employment that the Board of Supervisors has determined to be a logical work-related grouping for the following reasons:

a. The longevity pay policy incentivizes employees to continue working for Placer County even though the employee is at the top of his or her pay scale and would not be eligible for any further pay increase.

b. The longevity pay policy rewards employees that are dedicated to Placer County as reflected by the completion of the necessary time period required to earn longevity pay.

c. The longevity pay policy helps maintain the pool of experienced employees at Placer County and avoid the loss of historical knowledge.

d. The longevity pay policy improves employee morale and promotes a positive work environment as the County is perceived as fairly treating all employees because longevity pay is earned regardless of the performance of the individual employee.

e. The longevity pay policy rewards employees that have completed the necessary paid hours at step 5 and that did not include persons receive pay increases through promotion or job transfers.

f. The longevity pay policy is not based on a specified job classification but based on only time worked.

g. The longevity pay policy creates a group or class where everyone that completes the necessary time period of paid hours receives longevity pay.

h. The longevity pay policy does not create a group or class of one individual.