

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0115

California Legislature

May 14, 2021

CalPERS Board Members and CEO Marcie Frost
P.O. Box 94207
Sacramento, CA 94229-2707

Subject: Appropriate application of Government Codes §3558.8 and §20636

Honorable Board Members and CEO Frost,

It has come to our attention that CalPERS has issued an interpretation of state law relating to certain public employee special compensation benefits that we believe is inconsistent with the clear language and legislative intent of the controlling statutes.

Our great state of California has traditionally valued and protected those that dedicate themselves to public service. Thousands of legislative proposals have been enacted over the years to advance the rights, benefits and working conditions for public employees and their exclusive bargaining representatives, their unions.

One such law is CA Government Code §20636(c)(1). This section permits an employer to pay special compensation to an employee for special skills, knowledge, abilities, work assignment, workdays, hours, or other similar purposes. Special compensation benefits pursuant to §20636(c)(1) are included in an MOU where both sides have agreed.

Relatedly, California Code of Regulations 571(a) explicitly states that any special compensation contained in a labor agreement must be reported to CalPERS. In this case, the employer/city properly reported this special compensation to CalPERS for inclusion in the formula to determine the employee's expected pension benefit.

In 2018, the legislature passed, and the governor signed into law SB 1085 (Skinner) now Government Code §3558.8 (Chapter 893, Statutes of 2018). This law requires public employers to grant a leave of absence and allow representatives of employee organizations to fulfill their union responsibilities *without loss of compensation or other benefits*.

In the present case, a long-time city employee, who also serves as the elected president of the exclusive bargaining representative (union), has been receiving special compensation for meeting the standards established by the employer (city) and enshrined in the applicable MOU between the city and the union. The employer and employee have been reporting & paying on

this compensation. Importantly, this has been the practice, historically, for other employee / union presidents who serve and have served in the same work assignment.

The employee/union president received notice from CalPERS that the “special compensation” would not be included in the employee’s pension calculations used to determine the employee’s total monthly pension payments upon retirement. This is contrary to past practice and the law.

By excluding the previously-included special compensation used to determine the employee’s expected pension payments, CalPERS is acting in violation of Government Code §3558.8.

As we have learned, CalPERS has asserted that this employee’s special compensation should not be included in his retirement formula because he is on a full-time leave of absence from his duties as a city employee and serves as the elected president of the exclusive bargaining representative.

It is on this basis that CalPERS concludes the employee is disqualified from receiving special compensation or other benefits simply due to the employee being on an employer-approved “leave of absence” in order to fulfill special skills in this city approved work assignment.

Government Code §3558.8 is clear and unambiguous. The law requires public employers to grant a leave of absence and allow representatives of employee organizations to fulfill their union responsibilities without loss of compensation or other benefits.

Furthermore, CalPERS wishes to refund the increased pension amounts paid by the employee toward this funded benefit and that the employer (city) should receive a credit for their prepaid portion of the contractually obligated payments the city has made for this benefit.

If left unchanged, the employee will suffer a **devastating** “loss of compensation and other benefits” simply because he is on an employer-approved work assignment on a leave of absence pursuant to a mutually agreed labor agreement.

In summary, we have highlighted these guiding principles to aid any discussions.

Employers may provide special compensation/benefits to a qualifying employee, and
The union may pay to cover all costs that the employer incurs for the leave of absence

Employers must report special compensation contained in an MOU to CalPERS, and
The union may pay to cover all costs that the employer incurs for the leave of absence

Employers must grant employees a leave of absence to conduct union duties, and

The union may pay to cover all costs that the employer incurs for the leave of absence

Employees on leave shall suffer no "loss of compensation or other benefits"

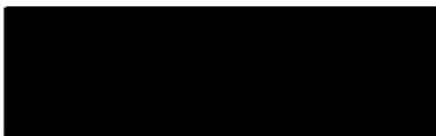
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Government Code §3558.8 as written and enacted to require public employers to grant a leave of absence and to allow representatives of employee organizations to fulfill their union responsibilities without loss of compensation or other benefits.

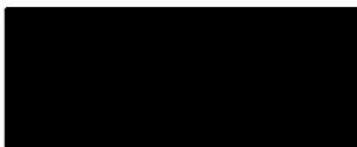
The loss of compensation, including special compensation, previously provided but now revoked due to the qualified public employee's status and work assignment as union president is the very type of harm that GC §3558.8 was implemented to prevent. Additionally, this law codifies CalPERS's past practice with regard to retired employees who served in the same work assignment and continue to receive payments that include the special compensation in their retirement formula. Lastly, CA Government Code §20636(c)(1) explicitly allows an employer to pay special compensation for a work assignment agreed upon in a labor agreement.

We look forward to hearing from you about the necessary steps that will be taken to ensure compliance with requirements of Government Code §3558.8 and other related statutes.

Respectfully,



Senator Bob Archuletta
32nd District



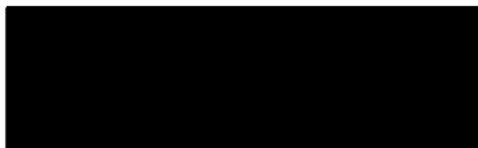
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69th District



Assemblymember Sharon Quirk-Silva
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Senator Thomas Umberg
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California State Senate

SENATOR
JOSH NEWMAN
TWENTY-NINTH SENATE DISTRICT



June 3, 2021

CalPERS Board Members and CEO Marcie Frost
P.O. Box 94207
Sacramento, CA 94229-2707

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TRANSPORTATION

JOINT LEGISLATIVE COMMITTEE
ON EMERGENCY MANAGEMENT

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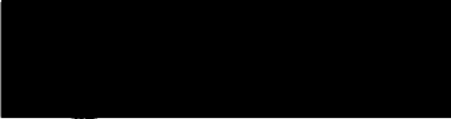
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Josh Newman
Senator, 29th District