BEFORE THE
TEACHERS' RETIREMENT BOARD
STATE OF CALIFORNIA

In the Matter of the Retirement Benefits of:

BETTY FORRESTER, Respondent.

Agency Case No. STRS202100005

OAH No. 2022050635

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on October 12, 2022, by videoconference.

Natalie P. Vance, Esq., Klinedinst PC, represented William Perez (Complainant), Chief Benefits Officer, California State Teachers' Retirement System (CalSTRS).

Barry J. Bennett, Esq., Bennett & Sharpe, Inc., represented Betty Forrester (Respondent).

Oral and documentary evidence was received. The record was left open for the parties to submit written closing and reply briefs. All briefs were timely submitted. The ALJ marked Complainant's closing and reply briefs as Exhibits 34 and 35, respectively, and Respondent's closing and reply briefs as Exhibits A and B, respectively. The record was closed and the matter submitted for decision on November 14, 2022.

SUMMARY

The central issue in this proceeding is whether Respondent's contributions to the CalSTRS Defined Benefit Program during the time she work as an elected officer of the United Teachers Los Angeles Union (UTLA) should be reported based on a 12-month pay schedule or a 10-month pay schedule. Complainant contends that under the Teacher's Retirement Law (TRL) (Ed. Code, § 22000 et seq.) (all further statutory references are to the Education Code, unless otherwise designated), the duties of an elected UTLA officer do not meet the definition of "creditable service." Therefore, only the 10-month pay schedule that Respondent would have earned if she had performed the regular duties of a certificated teacher for her employer, the Los Angeles Unified School District (District), is creditable compensation. Furthermore, complainant argues that this issue was previously decided in 2019 in OAH case number 2018010968 (2019 Decision and Order), which affirmed that District incorrectly reported two other UTLA elected officers' compensation based on the 12-month pay schedule rather than the 10-month pay schedule. Complainant asserts that Respondent is bound by the 2019 Decision and Order as a nonparty and she is also collaterally estopped from challenging that decision. Respondent, on the other hand, contends the 2019 Decision and Order is not binding, collateral estoppel does not apply, and Respondent is entitled to retirement benefits based on the 12-month pay schedule as a matter of law.

After review of the evidence, the parties' briefing, and the language and policy of the pertinent law, the ALJ finds that the 2019 Decision and Order is not binding on Respondent, the doctrine of collateral does not apply in this case, but District misreported Respondent's full-time earnings based on the 12-month pay schedule. Therefore, CalSTRS correctly determined that Respondent's retirement benefits shall

be calculated based on the 10-month pay schedule during her tenure as an UTLA elected officer.

FACTUAL FINDINGS

Jurisdictional Matters

1. This proceeding arises under the TRL. Respondent is a retired member of CalSTRS. She worked for District from 1974 to June 2017, when she retired from service. The District is an employing agency for which creditable service is subject to coverage by CalSTRS. Respondent has been receiving retirement benefits from CalSTRS since her retirement from District.

2. On March 21, 2022, Complainant, acting in his official capacity, filed the Statement of Issues. The Statement of Issues alleged that "[w]hen a teacher goes on a leave of absence to work as a union officer, the District may only report the compensation that the member would have earned if they had performed the regular duties of a certificated teacher, i.e. on a 10-month schedule, and not the twelve months as an elected officer [of the UTLA]." (Ex.1, p. A2.) On March 26, 2022, Respondent timely filed a Notice of Defense and requested a hearing. This hearing followed.

Background

3. CalSTRS is the state agency charged with overseeing the pension fund for teachers and educators who work in public school and college districts throughout California. (Cal. Const ., art. XIV, 5 17.) The Legislature created CalSTRS "to provide a financially sound plan for retirement, with adequate retirement allowances, of teachers

in the public schools of this state, teachers in schools supported by this state, and other persons employed in connection with the schools. . .. " (§ 22001.) CalSTRS is charged with determining "the appropriate crediting of contributions to the Defined Benefit Program . . . " according to "sound principles that support the integrity of the retirement fund." (§ 22119.2, subd. (f).)

4. CalSTRS members who are full-time teachers are eligible to participate in the Defined Benefit Program. The Defined Benefit Program is CalSTRS's traditional defined benefit plan that provides retirement, survivor, and disability benefits. Under the Defined Benefit Program, members receive monthly benefits based on a formula set by the TRL using the member's age, service credit, and final compensation.

5. District is an employing agency for which creditable service is subject to coverage by CalSTRS. Pursuant to a collective bargaining agreement between the District and UTLA, the labor union for certificated teachers of the District, UTLA members who are elected officers may take an organizational leave of absence from their teaching duties at District. UTLA would then reimburse District for all salary and benefit payments made by District to, or on behalf of, UTLA officers for the periods they worked as union officers.

6. Respondent was a member of the UTLA. From 1974 to June 30, 2008, Respondent worked as a certificated teacher for District. As such, Respondent worked 10 months per year and was paid by District based on a 10-month pay schedule also known as C-Basis rate. In 2008, Respondent ran for, and won, election as the secretary of UTLA. From July 1, 2008, until her retirement on June 30, 2017, Respondent held various elected officer positions with UTLA. As an elected UTLA officer, Respondent took a leave of absence from District and worked 40 hours per week, 12 months per

year. After Respondent became a UTLA elected officer, District paid her based on a 12-month pay schedule, also known as the A-Basis rate.

7. During the period Respondent served as an UTLA elected officer, District reported both employer and employee contributions to CalSTRS based on the 12-month pay schedule rather than the 10-month pay schedule.

8. On May 11, 2017, Respondent met with CalSTRS Benefit Specialist Jim Allen (Allen). He provided an estimate to Respondent showing a monthly modified benefit of $7,599, assuming she elected to have her beneficiary receive 50 percent of her benefits in monthly annuities upon her death (50 percent option), with a projected retirement date of June 30, 2017. (Ex. 14, p. A113.) This estimate also contained a disclaimer that it was based on information reported by her employer and subject to change. (*Ibid.*)

9. Respondent elected the 50 percent option and retired from District effective June 30, 2017. A verification of benefits letter dated November 27, 2018, indicates Respondent began receiving retirement benefits beginning July 1, 2017, in the amount of $7,749.21, with an automatic annual benefit adjustment of two percent. (Ex.15.) This letter also indicates that Respondent would receive these benefits for her lifetime. (*Ibid.*)

10. Allen's estimate of Respondent's retirement benefit and the monthly retirement benefit Respondent received beginning on July 1, 2017, were calculated using District's reporting of Respondent's compensation during her tenure as an UTLA elected officer based on the 12-month pay schedule.

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The Audit Report Leading to the 2019 Decision and Order

11. In 2015 and 2016, CalSTRS Audit Services conducted an audit of District. (Ex. 9.) The audit reviewed District's records for a sample population of members during the audit period of July 1, 2013, through June 30, 2015, to assess District's compliance with the TRL. (*Id.* at p. A53.) The purpose of the audit was to determine whether District reported creditable service and creditable compensation in compliance with the TRL and to determine whether District's payroll and personnel records supported the payroll information District reported to CalSTRS. (*Id.* at pp. A53-54.)

12. On April 8, 2016, the CalSTRS Audit Services issued its Final Audit Report (Audit Report), in which it found that District misreported creditable compensation for two members, Warren Fletcher (Fletcher) and Michael Caputo-Pearl (Caputo-Pearl), who served as UTLA elected officers and whose records were sampled as a part of the audit. (Ex. 9, pp. A55-56.) Specifically, CalSTRS Audit Services determined that District reported Fletcher and Caputo-Pearl's contributions to CalSTRS based on a 12-month pay schedule, when it should have reported their contributions based on a 10-month pay schedule. (*Id.* at pp. A58.) The Audit Report also requested District to "initiate a review of all members serving as elected officers from the 2013-2014 school year forward, and identify additional (active and retired) members outside the audit sample who served as an elected officer and had incorrect creditable compensation reported to the Defined Benefit Program." (*Id.* at pp. A58-59.)

13. District, Fletcher, and Caputo-Pearl jointly appealed the audit results. After an administrative hearing on September 26, 2018, in which all parties were represented by counsel, an ALJ issued a Proposed Decision in case number 2018010968, affirming the findings of the Audit Report with respect to Fletcher and

Caputo-Pearl. (Ex. 13.) On January 31, 2019, CalSTRS Appeals Committee adopted the Proposed Decision as the 2019 Decision and Order, effective February 1, 2019. (*Id.* at p. A86.) The 2019 Decision and Order relied on CalSTRS' interpretation of section 22711, that the statute granted service credit to members during their tenure as elected union officers, conditioned on the member making contributions to the Defined Benefit Program in the amount he or she would have contributed had the member performed creditable service on a full-time basis. (*Id.* at p. A95.) The 2019 Decision and Order stated: "CalSTRS' interpretation of the pertinent Education Code provisions is not clearly erroneous and is entitled to deference. Respondents have not met their burden of proof in this case to establish by a preponderance of the evidence that CalSTRS's final audit report should be overturned." (*Id.* at p. A97.)

14. District, Fletcher, and Caputo-Pearl did not request further judicial review of the 2019 Decision and Order by filing a petition for writ of mandate. Thus, the 2019 Decision and Order is now final and adjudicated. CalSTRS has published the 2019 Decision and Order on its website, making it available for public inspection and copying. However, CalSTRS has not designated the 2019 Decision and Order as a precedential decision.

District's Re-Reporting of Respondent's Compensation

15. In accordance with the 2019 Decision and Order and the Audit Report, District identified additional members outside the audit sample who had served as elected officers and for whom District had also reported creditable compensation based on the 12-month pay schedule. District identified Respondent as one of those additional members. In August 2019, District re-reported Respondent's compensation during her tenure as an elected UTLA officer based on a 10-month pay schedule, and Respondent's retirement benefits were recalculated. (Ex. 27, p. A215.) CalSTRS had no

knowledge that Respondent's compensation was previously reported based on the 12-month pay schedule until District re-reported the retirement compensation data to CalSTRS. (*Ibid.*)

16. In a letter dated August 17, 2019, CalSTRS informed Respondent that District had incorrectly reported her creditable compensation, resulting in an overpayment of $43,129.31 for the period of July 1, 2017, to July 31, 2019, and a reduction in her modified monthly retirement benefits to $6,122.62. (Ex. 16, pp A116-117.) Moreover, this adjusted monthly benefit would be further reduced by 5 percent to collect the overpayment. (*Id.* at p. A117.)

17. From August 22, 2019, to January 28, 2019, Respondent contacted various CalSTRS representatives regarding the overpayment charges and the reduction in her monthly retirement benefits. Respondent also requested an administrative hearing to appeal CalSTRS' determination.

18. In a letter dated January 29, 2020, CalSTRS Assistant General Counsel, Reina G. Minoya (Minoya) denied Respondent her request for administrative remedies. (Ex. 17.) Minoya explained the 2019 Decision and Order already decided that section 22711 requires District to report the compensation of UTLA elected officers on a 10-month pay schedule. (*Id.* at p. A119.) Thus, Minoya concluded, "administrative remedy rights are not currently available in law through CalSTRS for this type of situation." (*Ibid.*)

Respondent's Writ of Mandate for Her Appeal Rights

19. On April 12, 2021, Respondent, seeking her right to an administrative appeal, filed a Second Amended Verified Petition for Writ of Mandate and Complaint for Declaratory Relief (Writ) in case number 20STCP01570 in the Superior Court of

California. (Ex. 18.) CalSTRS opposed the Writ, arguing in part that the issue was previously decided under the 2019 Decision and Order and collateral estoppel precluded re-litigation of the same issue. (Ex. 20, pp. A162-164.)

20. On August 9, 2021, after a hearing, the superior court issued an order granting the Writ (Writ Order) and allowing Respondent to proceed with her administrative appeal through this present hearing. In the Writ Order, the court declined to rule on the collateral estoppel argument, reasoning that "it is not an issue requiring resolution under these facts" because Respondent "challenges only her rights arising from CalSTRS' duty under the regulations to provide her with an administrative appeal." (Ex. 23, p. A189.)

Respondent's Testimony

21. At the hearing, Respondent testified that she worked as a certificated teacher for District before being elected as an UTLA officer in 2008. After becoming an elected UTLA officer in July 2008, Respondent no longer taught in the classroom. Every year during her tenure as an UTLA elected officer from 2008 to 2017, Respondent applied for release from classroom assignment, and District approved the leave of absence. As an elected UTLA officer, Respondent worked 12 months a year, and she was paid on the A-Basis rate for 12 months a year. During those nine years, Respondent worked on weekends and holidays and during off-hours. Respondent reported that she was aware of hundreds of UTLA members who were paid at the A-Basis (12-month) rate, but she had never heard of anyone's retirement benefits being reduced.

22. According to Respondent, when she was near the age of 65, she began to consider retirement. Respondent set up a meeting with a CalSTRS representative

who gave her an estimate based on the 12-month pay schedule. Respondent relied on this estimate when she decided to retire, believing that she would receive that amount for life.

23. Respondent began receiving retirement benefits on July 1, 2017. At the time of her retirement, she was not aware of any audit by CalSTRS. Although Respondent knows Fletcher and Pearl-Caputo from working together at UTLA, she does not know anything about their appeal and was not aware of the 2019 Decision and Order. Respondent testified she would be placed under financial hardship if CalSTRS determination were affirmed. Her retirement benefits would be reduced by approximately 25 percent, and she would owe an overpayment of over $40,000. Respondent would not be able to return to work because a penalty would be imposed on her if she worked after her retirement. Additionally, Respondent would have difficulty finding work, as she has already lost connections with administrators at schools who could offer her jobs.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Respondent contends that CalSTRS bears the burden of proof in this matter and cites to *Baxter v. State Teachers Retirement System* (*Baxter*) (2017) 18 Cal.App.5th 340, 374-75 and *Stanislaus County Office of Education* (STRS Precedential Decision 19-01, at p. 9). (Ex. A, p. B5.) However, neither citation supports Respondent's contention. In *Baxter,* the Court of Appeal concluded that "in the context of satisfying a prescribed statute of limitations, the filing of a statement of issues to initiate administrative proceedings is the closest analogue to the filing of a civil complaint."

(*Baxter, supra*, 18 Cal.App.5th 340, 374-75.) The Court did not make any determinations regarding the burden of proof in an administrative hearing concerning retirement benefits. Furthermore, while the ALJ in *Stanislaus County Office of Education* (STRS Precedential Decision 19-01, at p. 9) found that CalSTRS bears the burden of proof in a case involving the misreporting of a one-time off-schedule salary payments, the central holding of that decision was not about the burden of proof, but the interpretation of section 22905, which required the reporting of certain payments to CalSTRS' Defined Benefit Supplement Account.

2. Generally, the party asserting the affirmative has the burden of proving the allegations by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn 5.) Here, Respondent, as the party asserting entitlement to greater retirement benefits, is asserting the affirmative. Nevertheless, regardless of who bears the burden of proof, the facts here are essentially undisputed, and the issues presented are purely questions of law. Thus, the outcome of this case does not turn on the burden or the standard of proof.

The 2019 Decision and Order Not Binding on Respondent

3. CalSTRS alleges in the Statement of Issues that under Government Code section 11519, subdivision (f), Respondent is required to comply with the 2019 Decision and Order. (Ex. 1, p. A 10.) This contention is not supported by the law.

4. The Administrative Procedure Act (APA), set forth at Government Code section 11500 et seq., governs the administrative appeal of a party aggrieved by a final audit determination of CalSTRS. (§ 22219, subd. (b).) Government Code section 11519, subdivision (f), states: "A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying

or the nonparty has actual knowledge of the decision." According to CalSTRS, Respondent is a nonparty who must abide by the 2019 Decision and Order which has made available for public inspection and copying on the CalSTRS website. However, this is a misreading of the statute.

5. Government Code section 11519 became operative on July 1, 1997, after it was amended in 1996 by Senate Bill Number 523. The Law Revision Comments on this statute states:

> The binding effect of a decision on nonparties who have actual knowledge may be illustrated by a state law that prohibits wholesalers from delivering alcoholic beverages to liquor dealers unless the dealers hold valid licenses from the state beverage agency. If the agency issues a decision revoking the license of a particular dealer, this decision is binding on any wholesaler who has actual knowledge of it, even before the decision is made available for public inspection and copying; the decision binds all wholesalers, including those without actual knowledge, after it has been made available for public inspection and copying.

(25 Cal.L.Rev.Comm. Reports 55 (1995).)

6. Thus, Government Code section 11519, subdivision (f), does not apply to the instant case, as Respondent is not akin to a nonparty who must abide by a decision that revoked the license of a respondent in another litigation. The APA does contemplate a situation such as the one here, where CalSTRS believes that a legal issue has been decided and may serve as a precedent for other cases, but it requires the

agency to designate the decision as such. Specially, Government Code section 11425.60, subdivision (b), states in pertinent part, "An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur." However, it is undisputed that CalSTRS has not designated the 2019 Decision and Order as precedential, and therefore, it has no binding effect on Respondent as a nonparty.

7. Consequently, cause does not exist to deny Respondent's appeal pursuant to Government Code section 11519, subdivision (f).

Doctrine of Collateral Estoppel Not Applicable

8. CalSTRS alleges in the Statement of Issues that Respondent is barred from relitigating the same issue that was decided in the 2019 Decision and Order under the doctrine of collateral estoppel. (Ex. 1, p. A9.) Respondent, on the other hand, contends that this issue was "implicitly rejected" by the Superior Court in granting the Writ. (Ex. A, pp. B6-B7.) Neither party's contention is compelling. As described above, the Superior Court, in the Writ Order, explicitly stated it declined to make any ruling on the issue of collateral estoppel because it was not essential in resolving Respondent's request for her appeal rights. (*Ante*, Factual Finding 20.) As for CalSTRS' argument to apply collateral estoppel in this case, an analysis of the caselaw reveals that the doctrine cannot apply here because Respondent is not in privity with any of the respondents of the 2019 Decision and Order.

9. Generally, the doctrine of collateral estoppel, or issue preclusion, applies to administrative hearings. The California Supreme Court has held that an administrative decision can have preclusive effect in subsequent litigation when the tribunal that issued the decision was acting in its judicial capacity to resolve a disputed

issue properly before it. (*People v. Sims* (1982) 32 Cal.3d 468, 479.) Collateral estoppel applies only "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*Samara v. Matar* (2018) 5 Cal.5th 322, 326 & fn. 1.)

10. In the case at hand, three of the four elements are satisfied. The issue to be precluded—whether the District was required to report elected union officers' compensation based on the 10-month or 12-month pay schedule—is identical to that decided in the 2019 Decision and Order. This issue was litigated and decided in 2019. The 2019 Decision and Order is final. However, the fourth element, that Respondent, who was not a party to the 2019 Decision and Order, must be in privity with any one of the parties in the prior adjudication, is lacking in this case.

11. The question of privity has been restated in terms of whether a nonparty was "sufficiently close" to an unsuccessful party in a prior action as to justify the application of collateral estoppel against the nonparty. (*Lynch v. Glass* (1975) 44 Cal.App.3d 943, 948.) More precisely, the Appellate Court in *Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1069-1070, stated:

> The concept of privity for the purposes of . . . collateral estoppel refers "to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights [citations] and, more recently, to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is 'sufficiently close' so as to justify application of the doctrine of collateral

> estoppel. [Citations.]" [Citations.] This requirement of identity of parties or privity is a requirement of due process of law. [Citation.]

12. Here, although Respondent had no common interest with the District, she had a common interest with Fletcher and Caputo-Pearl in maintaining higher retirement benefits based on the 12-month pay schedule. That common interest also seemed to have been adequately represented in the prior litigation resulting in the 2019 Decision and Order. However, "[c]ollateral estoppel may be applied only if due process requirements are satisfied. [Citations.] In the context of collateral estoppel, due process requires that the party to be estopped must have had an identity or community of interest with, and adequate representation by, the losing party in the first action as well as that the circumstances must have been such that the party to be estopped should reasonably have expected to be bound by the prior adjudication." (*Sutton v. Golden Gate Bridge, Highway & Transportation Dist.* (1998) 68 Cal.App.4th 1149, 1155; see *also George F. Hillenbrand, Inc. v. Insurance Co. of North America* (2002) 104 Cal.App.4th 784, 826.) "The 'reasonable expectation' requirement is satisfied if the party to be estopped had a proprietary interest in and control of the prior action, or if the unsuccessful party in the first action might fairly be treated as acting in a representative capacity for the party to be estopped. [Citations.] Furthermore, due process requires that the party to be estopped must have had a fair opportunity to pursue his claim the first time. [Citation.]" (*Old Republic Ins. Co. v. Superior Court* (1998) 66 Cal.App.4th 128, 154.)

13. Applying these principles to this case, Respondent did not have any proprietary interest in the prior litigation, as the 2019 Decision and Order did not involve her retirement benefits but that of Fletcher and Caputo-Pearl. In 2018,

Respondent was not even aware that Fletcher and Caputo-Pearl were engaged in litigation concerning the reporting of compensation of elected union officers. She had neither the incentive nor the means to intervene in that action. There is no evidence that Fletcher and Caputo-Pearl, as unsuccessful parties in the prior action, acted as representatives for Respondent, and there is no evidence Respondent had any control over the prior litigation. Considering these factors, Respondent had no reason to expect she would be bound by the 2019 Decision and Order in which she did not participate.

14. This result is consistent with analogous cases in which the principles of privity have been applied. For example, in *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 89–90), the Court of Appeal conclude that the plaintiff, who alleged he had been exposed to asbestos in the course of his employment, was not collaterally estopped from litigating issues decided adversely to other workers in a prior asbestos litigation against the same defendant. Additionally, in *Nein v. HostPro, Inc.* (2009) 174 Cal.App.4th 833, 844-847, the Court of Appeal held that plaintiff, who sought to recover commissions from AT& T Corporation he claimed were due to him, was not collaterally estopped the from litigating the same issues decided in a prior action involving a similarly situated plaintiff.

15. Consequently, because Respondent is not in privity with any of parties in the 2019 Decision and Order, cause does not exist to deny Respondent's appeal under the doctrine of collateral estoppel.

Interpretation of Section 22711

16. The Statement of Issues alleges that section 22711 requires District to report Respondent's compensation based on the 10-month pay schedule salary she

would have made as a certificated teacher, not based on the 12-month pay schedule for non-creditable service as an elected union officer. (Ex. 1.) Respondent, however, contends that the plain language of section 22711 allows Respondent to receive retirement benefits based on the 12-month pay schedule. (Ex. A, p. B8.) Respondent's contention is not compelling.

PLAIN LANGUAGE CONSTRUCTION

17. The fundamental rule in construing a statute is to determine the Legislature's intent. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) To determine that intent, "'[t]he court turns first to the words themselves for the answer.'" (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724, quoting *People v. Knowles* (1950) 35 Cal.2d 175, 182; see also *Yuba City Unified School Dist. v. CalSTRS* (2017) 18 Cal.App.5th 648, 656.) At the time of Respondent's retirement in 2017, section 22711 (the statute has been since amended by Senate Bill 294, effective January 1, 2022) stated:

> (a) A member under this part shall be granted service credit for time during which the member serves as an elected officer of an employee organization while on a compensated leave of absence pursuant to Section 44987 or 87768.5, if all of the following conditions are met:
>
> (1) The member was employed and performed creditable service subject to coverage under this Defined Benefit Program in the month prior to commencement of the leave of absence.

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(2) The member makes contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(3) The member's employer contributes to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

18. The plain language of section 22711, subdivision (b), required Respondent to make contributions to CalSTRS in the amount that she would have contributed had she been performing creditable services on a full-time basis during the time she was an UTLA elected officer. Creditable service is defined by section 21119.5 to include "the work of teachers, instructors, district interns, and academic employees in the instructional program for pupils. . . ." (sudb. (a)(1)). Other education related activities, such was the work of counselors, health care providers, and school superintendents, are also defined as creditable service. (§ 2119.5) Nonetheless, the work of elected union officers is not included as creditable service under the same statute. Thus, for Respondent to receive any service credit for the time that she served as an UTLA elected officer, she can only make contributions to CalSTRS in the amount

that she would have contributed based on the 10-month pay schedule as a teacher, not based on the 12-month pay schedule as an elected union officer.

19. This plain language interpretation is consistent with the basic principles of statutory construction requiring "[t]he words of the statute [to] be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) Under section 24202.5, subdivision (a)(1), a member is entitled to retirement benefits based on the "percentage of the final compensation" of that member. "Final compensation," for members who have 25 years or more of credited service such as Respondent, is defined as "the highest average annual compensation earnable, as defined by section 22115, by a member during any period of 12 months of service." (§ 22134.5.) Section 22115 defines "compensation earnable" as "the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis." (§ 22115.) "Creditable compensation" under section 22119.2, subdivision (a), means "remuneration that is paid in cash by an employer to all persons in the same class of employees for performing creditable service in that position." However, section 22119.2, subdivision (c), specifies that "creditable compensation" excludes "[r]emuneration that is paid for service that is not creditable service pursuant to Section 22119.5."

20. Reading these statutes together as a whole, creditable service is the crucial element that is common to creditable compensation, earnable compensation, and thus final compensation. Work as a teacher is creditable service under section 22119.5, and therefore, compensation for that work constitutes creditable compensation, and in turn, earnable compensation or final compensation. By contrast,

work as an elected union officer is not creditable service under section 22119.5, and therefore, compensation for that work cannot constitute creditable compensation, and in turn, earnable compensation or final compensation. Yet, a school district is required to grant an employee a leave of absence without loss of compensation to allow the employee to serve as an elected officer for any local school district public employee organization. (§ 44987.) In this context then, section 22711 essentially carves out an exception for teachers who work as elected union officers, such as Respondent, to be granted service credit, but only on the condition that they make contributions to the Defined Benefit Program in the amount that they would have contributed if they were performing creditable service, e.g. teaching. To interpret section 22711 otherwise, as authorizing members to contribute to the Defined Benefit Program in the amount that they were performing work as elected union officers, would alter section 22119.5 by adding the work of elected union officers to the definition of creditable service, an inclusion which the Legislature never intended.

LEGISLATIVE HISTORY

21. A review of the legislative history further strengthens this statutory construction. A predecessor statute to section 22711, former section 14006, was added to the Education Code by Assembly Bill Number 2790 in 1974. (Assem. Bill No. 2790 (1973-1974 Reg. Sess.) § 1, repealed by Stats.1979, ch. 282, § 3, p. 966.) Section 14006, subdivision (b), authorized members to receive service credit for the time during which they served as elected officers, provided they made contributions to CalSTRS based on "the salary that [they] would have earned, including any increases and other adjustment, had [they] not been excused from performance of [their] duties. . . ." (*Id.* at § 1.) The stated purpose of this bill was to ensure that "members of the State Teacher' Retirement System who are serving as elected officers of educational organizations

not have their retirement benefits reduced." (*Id.* at § 2.) Thus, the intent of adding section 14006 to the Education Code was not to convert the work of elected union officers to creditable service but to ensure that members who became elected union officers do not lose out on the retirements benefits they would have earned had they remained in their teaching duties. Contributions to CalSTRS by such members were, therefore, based on the salary they would have earned as teachers, rather than the actual salary of elected union officers.

22. Furthermore, in 1980, another predecessor statute, former section 22706.5, was added to the Education Code by Assembly Bill Number 2658. (Assem. Bill No. 2658 (1979-1980 Reg. Sess.) § 1, repealed by Stats.1989, ch. 118, § 3.) Former section 22706.5 allowed employees of school districts with less than 50,000 employees to receive service credit while serving as elected officials on leaves of absences. Former section 22706.5, subdivision (b), required such an employee to contribute to CalSTRS in "the amount that would have been contributed had the member been employed full time." (*Id.* at § 1.) An analysis of the bill described the exiting law as requiring the employee serving as an elected official to "pay specified contributions to STRS based on the employee's salary at the time leave of absence was granted." (Sen. Com. on Pub. Employment & Retirement, Analysis of Assem. Bill No. 22706.5 (1979-1980 Reg. Sess.) as amended Apr. 15, 1980.) That is, the law required school employees to pay contributions to CalSTRS based not on their salary as elected officials, but on their salary before they became elected officials. Although the bill noted that the enactment of the statute would allow such service credit to be granted to any certificated school employee regardless of the size of the school district, there were no changes to the contribution requirements. (*Ibid.*)

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23. Thus, the legislative history of predecessor statutes to section 22711 demonstrates that the requirement was always for school employees who become elected union officers, such as Respondent, to contribute to CalSTRS based on their salary or work as certificated employees (e.g., teachers) rather than that of elected union officers. There is no evidence that this legislative intent has undergone any changes since the enactment of the current version of section 22711.

DEFERENCE TO CALSTRS' CONSTRUCTION

24. Finally, CalSTRS has published its own interpretation of section 22711. In 2011, CalSTRS issued Employer Directive 2011-04, in which it construed section 22711 as requiring "[t]he member [to make] contributions to the Teachers' Retirement Fund in the same amount as if they were still performing creditable service on a full-time basis in the position from which they are on a compensated leave of absence during the time they serve as an elected official." (Ex. 28, p. A218.) Employer Directive 2011-04 further instructed employers to report "the member's earnings and contributions as if he or she were working full-time in the position from which they have taken a compensated leave of absence. . . ." (*Ibid.*)

25. As the agency charged with interpretation and enforcement of the TRL, CalSTRS's construction of the TRL is entitled to great weight. Courts will generally not depart from the interpretation of a law by the agency charged with its enforcement unless it is clearly erroneous. (*Cummings v. California State Teachers' Retirement Bd.* (1966) 241 Cal.App.2d 149, 157; *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1155.)

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STATUTE OF LIMITATIONS

26. Respondent asserted as an affirmative defense that CalSTRS is barred from recovering Respondent based on the statute of limitations. (Ex. A., p. B9.) The TRL establishes a three-year statute of limitations for the "adjustment of errors or omissions" with respect to the Defined Benefit Program. (§ 22208.) The statute begins to run with the "discovery of the incorrect payment." (§ 22208, subd. (c); see also *Baxter*, *supra*, 18 Cal.App.5th at p. 355.) Here, District re-reported Respondent's compensation based on the 10-month pay schedule in August 2019, and Complainant filed the Statement of Issues on March 21, 2022. (*Ante*, Factual Findings 15 and 2.) Respondent offered no evidence showing that CalSTRS was aware of District's reporting error prior August 2019. Thus, contrary to Respondent's claim, CalSTRS's action fell within the three-year statutory period and is timely.

Disposition

27. There is no dispute that Respondent worked on a 12-month schedule when she became an UTLA elected union officer. However, section 22711 required District to report Respondent's compensation during her tenure as an elected union officer based on the 10-month pay schedule that she would have earned as a certificated teacher. Thus, cause exists to deny Respondent's appeal pursuant to section 22711, and CalSTRS correctly found that Respondent's retirement benefits must be recalculated based on the 10-month pay schedule during the time Respondent served as an elected union officer.

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ORDER

The Statement of Issues is granted. The appeal of Respondent Betty Forrester is denied. CalSTRS's decision to base Respondent Betty Forrester's retirement benefits on the 10-month pay schedule is affirmed.

DATE: 12/11/2022

Ji-Lan Zang

JI-LAN ZANG
Administrative Law Judge
Office of Administrative Hearings