



Board of Administration Educational Day

Action Item - Proposed Decisions of Administrative Law Judges

9. Larry J. Kosmont

January 18, 2022

Item Name: Proposed Decision – In the Matter of the Appeal of Membership Eligibility of LARRY J. KOSMONT, Respondent, and CITY OF MONTEBELLO, Respondent.

Program: Employment Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should adopt the Proposed Decision, as modified Respondent Larry J. Kosmont's (Respondent Kosmont) position is included in Attachment C, if any.

Strategic Plan

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

Procedural Summary

CalPERS determined that Respondent Kosmont was an employee, and not an independent contractor, of Respondent City for the period of May 12, 2011 to February 29, 2012. However, CalPERS determined that Respondent Kosmont did not qualify for CalPERS membership because he was not hired to work full-time for more than six months, was not hired to work part-time for at least an average of 20 hours a week for one year or longer, and did not work more than 1,000 hours in a fiscal year. Respondent Kosmont submitted an appeal regarding CalPERS' determination and the matter was heard by the Office of Administrative Hearings on September 9, 2021. Due to Respondent City of Montebello's failure to appear, the case proceeded as a default as to Respondent City of Montebello only under Government Code section 11520. A Proposed Decision was issued on November 24, 2021, granting Respondent Kosmont's appeal.

Alternatives

- A. For use if the Board decides to modify and adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517 (c)(2)(C) which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the Proposed Decision, by changing the year "2021" to "2012" in paragraph 19. on page 7 and changing the word "xontractor" to "contractor" in paragraph 23. on page 8 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated November 24, 2021, as modified, concerning the appeal of Larry J. Kosmont; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. For use if the Board decides to adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated November 24, 2021, concerning the appeal of Larry J. Kosmont; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- C. For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated November 24, 2021, concerning the appeal of Larry J. Kosmont, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

- D. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated November 24, 2021, concerning the appeal of Larry J. Kosmont, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

- E. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeal of Larry

J. Kosmont, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeal of Larry J. Kosmont.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
Deputy Executive Officer
Customer Services and Support