



Board of Administration

Agenda Item 9a2

April 19, 2022

Item Name: Proposed Decision – In the Matter of the Appeal Regarding Compensation Earnable Calculation of Santa Ana Police Officers Association President by CITY OF SANTA ANA, Respondent, and GERRY SERRANO, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should adopt the Proposed Decision, as modified. Respondent City of Santa Ana's (Respondent City) position is included in Attachment C, if any. Respondent Gerry Serrano's (Respondent Serrano) 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

Respondent City submitted a request that CalPERS review an item of compensation, Confidential Premium, received by a Sergeant while on a paid leave of absence for compliance with the Public Employees' Retirement Law (PERL). CalPERS determined that the Confidential Premium Pay does not qualify as reportable compensation under the PERL. In addition, CalPERS determined that additional items of "special assignment pay," such as Detective Division Premium and Bilingual Premium, do not qualify under the PERL because the Sergeant, while on full-time leave, was not routinely and consistently performing services for Respondent City. Respondent City appealed CalPERS' determination.

While the action was pending, Respondent Serrano, who was on a full-time paid leave of absence while serving as the President of the Santa Ana Police Officers Association (SAPOA), requested the right to intervene in Respondent City's appeal. Because Respondent Serrano would potentially be impacted by CalPERS' determination, CalPERS agreed to allow him the right to participate in the appeal. CalPERS conducted a review of compensation Respondent Serrano is receiving while on full-time leave from his duties as a Sergeant for Respondent City, and issued a determination letter finding Respondent Serrano's Confidential Premium Pay, Bilingual Premium, Detective Division Premium, Lead Worker/Supervisor Premium, Holiday Pay and Uniform Allowance do not qualify as reportable compensation under the PERL. CalPERS

also determined that it did not have sufficient information to determine whether Respondent Serrano's Off-Salary-Schedule Pay and Educational Incentive Pay qualify as reportable compensation under the PERL. In addition, CalPERS determined that the Employer Paid Member Contributions (EPMC) reported on behalf of Respondent Serrano by Respondent City would need to be recalculated to only include items of pay that comply with the PERL. Respondent Serrano appealed CalPERS' determination.

The matter was heard by the Office of Administrative Hearings on November 23, 2021. A Proposed Decision (PD) was issued on February 15, 2022. The PD denied Respondent City's appeal. The PD granted in part and denied in part Respondent Serrano's appeal. The PD granted Respondent Serrano's appeal with respect to Educational Incentive Pay. The PD denied Respondent Serrano's appeal and affirmed CalPERS' determination to exclude Respondent Serrano's Confidential Premium Pay, Bilingual Premium, Detective Division Premium, Holiday Pay and Uniform Allowance. The PD also affirmed CalPERS' determination that Respondent City must amend the EPMC it reports to CalPERS to only include those items of pay that qualify as reportable compensation under the PERL.

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 replacing the date "November 21, 2021" with the date "November 23, 2021" on page one, paragraph one and on page 16, paragraph two of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated February 15, 2022, as modified, concerning the appeals of the City of Santa Ana and Gerry Serrano; 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 February 15, 2022, concerning the appeals of the City of Santa Ana and Gerry Serrano; 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 February 15, 2022, concerning the appeals of the City of Santa Ana and Gerry Serrano, 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 February 15, 2022, concerning the appeals of the City of Santa Ana and Gerry Serrano, 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 appeals of the City of Santa Ana and Gerry Serrano, 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 appeals of the City of Santa Ana and Gerry Serrano.

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