



Board of Administration

Agenda Item 8a4

September 20, 2023

Item Name: Proposed Decision – In the Matter of the Appeal of Membership Determination of SALLY TIRADO, Respondent, and COUNTY OF MONTEREY; NATIVIDAD MEDICAL CENTER, Respondents.

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 Sally Tirado's (Respondent Tirado) position is included in Attachment C, if any.

Respondent County of Monterey; Natividad Medical Center's (Respondent County) 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 Tirado was an employee of the County of Monterey; Natividad Medical Center (Respondent County) from 2013 to 2020. Respondent Tirado submitted an appeal informing CalPERS that she had also been employed by Respondent County from 2002 through 2013, and asking CalPERS to find her eligible for CalPERS membership during that period of time. The matter was heard by the Office of Administrative Hearings on January 19 and June 2, 2023. A Proposed Decision was issued on August 4, 2023, finding that Respondent was a common law employee from May 1, 2002 to March 30, 2013.

Alternatives

A. 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 pursuant to Government Code section 11517, subdivision (c)(2)(C) which authorizes

the Board to “make technical or other minor changes in the proposed decision,” hereby modifies the Proposed Decision correcting “2006 through 2013” to “2002 through 2013” in paragraph 10, under the Factual Findings section, on page 4 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated August 4, 2023, as modified, concerning the appeal of Sally Tirado; 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 August 4, 2023, concerning the appeal of Sally Tirado; 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 August 4, 2023, concerning the appeal of Sally Tirado, 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 August 4, 2023, concerning the appeal of Sally Tirado, 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 Sally Tirado, 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 Sally Tirado.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Kimberly A. Malm
Deputy Executive Officer
Customer Services and Support