



Board of Administration

Agenda Item 8a7

September 21, 2022

Item Name: Proposed Decision – In the Matter of the Appeal Regarding Final Compensation Calculation of TIMOTHY C. ASBURY; KAREN E. BROWN; KENNETH C. DUNN; MARY E. FERNANDES; SUSAN D. HALVERSTADT-TAYLOR; MARC A. LEDONNE; REY M. LOPEZ; NOREEN M. NUNES; PHILIP A. REVOLINSKY; CHARLOTTE A. STRICKLAND; LISA C. TEETER; NANCY A. THUEMLER; M. DIANE VALK; SEAN S. ARLIN; ALMA M. CARNEY; MANUEL J. CESA; JAMES A. MIRANDA; LAURENCE R. OLSEN, Respondents, and COUNTY OF GLENN, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should adopt the Proposed Decision.

Respondent Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; Marc A. Ledonne; Rey M. Lopez; Noreen M. Nunes; Philip A. Revolinsky; Charlotte A. Strickland; Lisa C. Teeter; Nancy A. Thuemler; M. Diane Valk; Sean S. Arlin; Alma M. Carney; Manuel J. Cesa; James A. Miranda; Laurence R. Olsen (Respondent Members) position is included in Attachment C, if any.

Respondent County of Glenn'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

Respondent County inadvertently overreported employee compensation to CalPERS, resulting in the overpayment of retirement benefits to Respondent Members. After discovery of the error during an audit, CalPERS sought to prospectively reduce the Respondent Members' retirement allowances, and to collect the overpayments from Respondent Members for the most recent three years. CalPERS also sought to recover the remainder of the overpayments beyond the most recent three years from Respondent County. Both Respondent Members and Respondent County appealed CalPERS' determination.

Prior to an administrative hearing on the matter, Respondent County filed a motion to dismiss with the Office of Administrative Hearings, which was granted by the Administrative Law Judge (ALJ) without taking of any evidence (the first Proposed Decision). The Board of Administration rejected the first Proposed Decision and remanded the matter to OAH for a hearing on the merits, which was heard by OAH on February 17, 2022. Due to Respondent Brown's failure to appear, the case proceeded as a default under Government Code section 11520 as to Respondent Brown only.

A second Proposed Decision was issued on June 28, 2022, granting the appeals in part and denying the appeals in part. The Court found that Respondent County had erroneously reported employee compensation to CalPERS. The Court agreed with CalPERS that Government Code Section 20164.5 does not apply, so CalPERS was authorized to prospectively reduce the Respondent Members' retirement allowances and collect overpayments from them for the most recent three years. However, the Court held that CalPERS is precluded from collecting the balance of any overpayments made to Respondent Members beyond the most recent three years from Respondent County.

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 hereby adopts as its own Decision the Proposed Decision dated June 28, 2022, concerning the appeal of Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; Marc A. Ledonne; Rey M. Lopez; Noreen M. Nunes; Philip A. Revolinsky; Charlotte A. Strickland; Lisa C. Teeter; Nancy A. Thuemler; M. Diane Valk; Sean S. Arlin; Alma M. Carney; Manuel J. Cesa; James A. Miranda; Laurence R. Olsen; and County of Glenn; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

B. 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 June 28, 2022, concerning the appeal of Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; Marc A. Ledonne; Rey M. Lopez; Noreen M. Nunes; Philip A. Revolinsky; Charlotte A. Strickland; Lisa C. Teeter; Nancy A. Thuemler; M. Diane Valk; Sean S. Arlin; Alma M. Carney; Manuel J. Cesa; James A. Miranda; Laurence R. Olsen; and County of Glenn, 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.

- C. 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 June 28, 2022, concerning the appeal of Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; Marc A. Ledonne; Rey M. Lopez; Noreen M. Nunes; Philip A. Revolinsky; Charlotte A. Strickland; Lisa C. Teeter; Nancy A. Thuemler; M. Diane Valk; Sean S. Arlin; Alma M. Carney; Manuel J. Cesa; James A. Miranda; Laurence R. Olsen; and County of Glenn, 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.

- D. 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 Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; Marc A. Ledonne; Rey M. Lopez; Noreen M. Nunes; Philip A. Revolinsky; Charlotte A. Strickland; Lisa C. Teeter; Nancy A. Thuemler; M. Diane Valk; Sean S. Arlin; Alma M. Carney; Manuel J. Cesa; James A. Miranda; Laurence R. Olsen; and County of Glenn, 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 Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; Marc A. Ledonne; Rey M. Lopez; Noreen M. Nunes; Philip A. Revolinsky; Charlotte A. Strickland; Lisa C. Teeter; Nancy A. Thuemler; M. Diane Valk; Sean S. Arlin; Alma M. Carney; Manuel J. Cesa; James A. Miranda; Laurence R. Olsen; and County of Glenn.

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