



Board of Administration

Agenda Item 8a8

November 16, 2022

Item Name: Proposed Decision – In the Matter of the Appeal of Temporary Pay Rate Increase of DANA SUTTON KENNEDY, Respondent, and FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Dana Sutton Kennedy's (Respondent Kennedy) 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

Foothill-De Anza Community College District approved a salary package for all its employees, including Respondent Kennedy, regarding the 2018-2019 contract year. The salary package included a 5% temporary pay increase payable to all employee groups. CalPERS determined that the 5% temporary pay increase constituted Off Salary Schedule Pay (OSSP) and did not qualify as pensionable compensation for Respondent Kennedy because she was a "new" member of CalPERS subject to the Public Employees' Pension Reform Act (PEPRA). CalPERS determined that OSSP could only be paid to "classic" members and that OSSP could not be considered payrate rather than special compensation. Respondent Kennedy appealed CalPERS' determination. The matter was heard by the Office of Administrative Hearings on July 14, 2022. A Proposed Decision was issued on September 23, 2022, granting Respondent Kennedy's appeal.

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

September 23, 2022, concerning the appeal of Dana Sutton Kennedy; 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 September 23, 2022, concerning the appeal of Dana Sutton Kennedy, 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 September 23, 2022, concerning the appeal of Dana Sutton Kennedy Sutton Kennedy, 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 Dana Sutton Kennedy, 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 Dana Sutton Kennedy.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
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Customer Services and Support