



## Board of Administration

# Agenda Item 9a4

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**March 16, 2022**

**Item Name:** Proposed Decision – In the Matter of the Appeal Regarding Final Compensation Calculation of GEORGE P. D'ABLAING, Respondent, and SAN DIEGO ASSOCIATION OF GOVERNMENTS, Respondent.

**Program:** Employer Account Management Division

**Item Type:** Action

### **Parties' Positions**

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

Respondent George P. D'Ablaing's (Respondent D'Ablaing) position is included in Attachment C, if any.

Respondent San Diego Association of Governments' (Respondent SANDAG) 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 D'Ablaing was employed by Respondent SANDAG as a Senior Transportation Engineer. Respondent D'Ablaing retired from Respondent SANDAG effective November 7, 2019. After Respondent D'Ablaing retired, CalPERS conducted an audit of certain contracting agencies, including Respondent SANDAG, regarding their reporting of special compensation. CalPERS' audit revealed that bonus pay reported on Respondent D'Ablaing's behalf did not qualify as compensation earnable and should not have been used for purposes of calculating his retirement benefits. CalPERS determined that it must correct the erroneous reporting and collect the overpayment of benefits that resulted from the error. Respondent D'Ablaing timely submitted an appeal of CalPERS' determination and the matter was heard by the Office of Administrative Hearings on December 28, 2021. A Proposed Decision was issued on January 21, 2022, affirming CalPERS' determination and denying Respondent D'Ablaing'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 January 21, 2022, concerning the appeal of George P. D'Ablaing; 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 January 21, 2022, concerning the appeal of George P. D'Ablaing, 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 January 21, 2022, concerning the appeal of George P. D'Ablaing, 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 George P. D'Ablaing, 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 George P. D'Ablaing.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Anthony Suine  
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Customer Services and Support