



Consent

Agenda Item 5c7

December 12, 2012

ITEM NAME: Proposed Decision – In the Matter of the Calculation of Final Compensation of LLOYD D. KUHN, Respondent, and SANGER UNIFIED SCHOOL DISTRICT, Respondent, Case No. 9398

PROGRAM: Customer Account Services Division

ITEM TYPE: Action Consent

PARTIES' POSITIONS

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

Respondent Kuhn argues that the Board of Administration should decline to adopt the Proposed Decision.

STRATEGIC PLAN

This item is not a specific product of either the Strategic or Annual Plans. The conduct of administrative hearings and determination of appeals is a power reserved to the Board of Administration.

PROCEDURAL SUMMARY

Respondent Lloyd D. Kuhn retired for service effective July 26, 2008. During a routine compensation review process, CalPERS staff determined that several items including auto allowance and health benefits were incorrectly reported as "payrate" for purposes of calculating Respondent Kuhn's final compensation. Respondent appealed this decision and the matter was heard by the Office of Administrative Hearings on August 2, 2012. At the hearing, Respondent Kuhn claimed he was entitled to a raise which was never paid and that it should be included in his calculation of retirement benefits. A Proposed Decision was issued on October 26, 2012, denying Respondent Kuhn's appeal and confirming CalPERS' determination as to the calculation of final compensation.

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 October 26, 2012, concerning the appeal of Lloyd D. Kuhn; 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 October 26, 2012, concerning the appeal of Lloyd D. Kuhn, 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 October 26, 2012, concerning the appeal of Lloyd D. Kuhn, 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 Lloyd D. Kuhn, 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 Lloyd D. Kuhn.

ATTACHMENTS

- Attachment A: Proposed Decision
- Attachment B: Staff's Argument
- Attachment C: Respondent(s) Argument(s)

DONNA RAMEL LUM
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Customer Services and Support