



## Consent

### Agenda Item 5c6

February 21, 2013

**ITEM NAME:** Proposed Decision – In the Matter of the Appeal of JOSEPH M. TANNER, Respondent, and CITY OF VALLEJO, Respondent; Case No. 9796

**PROGRAM:** Customer Account Services Division

**ITEM TYPE:** Action Consent

#### **PARTIES' POSITIONS**

Staff argues that the Board of Administration should adopt the Proposed Decision, with minor changes.

Respondents argue 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 determination of administrative appeals is a power reserved to the Board of Administration.

#### **PROCEDURAL SUMMARY**

Respondent Joseph Tanner (Tanner) is a CalPERS member who had accumulated many years of service credit with several local agencies that participate in CalPERS. Tanner had service retired from the position of City Manager of Pacifica in January 2007. He then returned to work for Respondent City of Vallejo (Vallejo), first as a retired annuitant and then as an active employee after reinstating from retirement. At retirement, Tanner claimed a "payrate" for final compensation purposes of \$305,844. Upon review by CalPERS staff, it was determined that the amounts Vallejo reported to CalPERS as Tanner's purported annual "payrate" in excess of \$216,000 did not meet the definition of "compensation earnable." Tanner appealed this determination and a hearing was conducted before an Administrative Law Judge (ALJ) for ten days. On November 20, 2012, the ALJ issued a Proposed Decision holding that CalPERS staff correctly determined Tanner's "compensation earnable" for purposes of calculating his retirement benefits.

## 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 modifies the Proposed Decision to include three minor changes, as follows:

- (1) The following citation from paragraph 12, on page 27, should be deleted: "(Gov. Code § 20636, subd. (g)(4)(E), (F), (H) & (I).)" Subdivision (g) of PERL section 20636 applies only to "state members." Tanner is a local member. This citation should be replaced with Gov. Code § 20636(c)(7)."
- (2) The reference to "16 months" in paragraph 13, on page 27, is clearly a typo and should read "26 months." Also, the citation in that paragraph to "Gov. Code § 20636, subd. (g)(4)(G)" should be stricken, for the same reasons discussed in No. (1) above, and replaced with "Gov. Code § 20636(c)(7)(A)."
- (3) The citation to "Gov. Code § 20636, subd. (e)(1)" in paragraph 16, on page 28, should be to "Gov. Code § 20636, subd. (e)(2)."

and adopts as its own Decision the Proposed Decision dated November 20, 2012, concerning the appeal of Joseph Tanner; 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 November 20, 2012, concerning the appeal of Joseph Tanner, 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 November 20, 2012, concerning the appeal of Joseph Tanner, 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 Joseph Tanner, 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 Joseph Tanner.

## **ATTACHMENTS**

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

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