



## Consent

### Agenda Item 6a1

April 17, 2013

**ITEM NAME:** Proposed Decision – In the Matter of the Calculation of the Final Compensation of PIER'ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent, Case No. 2011-0789

**PROGRAM:** Retirement Account Services

**ITEM TYPE:** Action Consent

#### **PARTIES' POSITIONS**

Staff argues that the Board of Administration should adopt in part and reject in part the Proposed Decision. Staff recommends that a Full Board Hearing be held concerning the ARSC issue.

Respondent Pier'Angela Spaccia argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent City of Bell argues that the Board of Administration should adopt in part and reject in part 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 Pier'Angela Spaccia (Respondent Spaccia) submitted an application to CalPERS for a service retirement pending determination of her application for an industrial disability retirement. Respondent Spaccia requested that CalPERS use the highest compensation she received from the City of Bell (Respondent Bell) of \$28,582 per month as her "final compensation." CalPERS reviewed the compensation that Respondent Bell had paid to Respondent Spaccia and concluded that the reported payrate was not "compensation earnable" and should not be used to calculate Respondent Spaccia's service retirement because Respondent Spaccia was not paid pursuant to a "publicly available pay schedule." CalPERS then determined that her retirement allowance should be based on "compensation

earnable" of \$7,607 per month that was paid to her by a previous public agency employer. In addition, CalPERS notified Respondent Spaccia that Respondent Bell's direct purchase of five years of additional retirement service credit ("ARSC" or "airtime") was improper and had to be rescinded. This had the effect of reducing Respondent Spaccia's total service credit by five years. Respondent Spaccia appealed these determinations and the matter was heard by the Office of Administrative Hearings on August 27, 28 and 29, 2012, as well as on December 27, 2012. A Proposed Decision was issued on February 26, 2013, finding that, for purposes of determining Respondent Spaccia's compensation earnable under the applicable statutes, Respondent Spaccia's 2003 contractual payrate from Respondent Bell of \$8,526 per month should be used. The Administrative Law Judge (ALJ) also found that CalPERS improperly disallowed the purchase of five years of ARSC, and restored those years of service credit to her account.

### **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 February 26, 2013, concerning the application of Pier'Angela Spaccia; 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:

(1) RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated February 26, 2013, concerning the application of Pier'Angela Spaccia, hereby adopts in part and rejects in part the Proposed Decision and determines to decide the issue regarding the additional retirement service credit purchase 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.

(2) RESOLVED that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated February 26, 2013, concerning the application of Pier'Angela Spaccia, 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 February 26, 2013, concerning the application of Pier'Angela Spaccia, 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 application of Pier'Angela Spaccia, 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 application of Pier'Angela Spaccia.

## **ATTACHMENTS**

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

---

DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support