



Agenda Item 10

June 19, 2013

ITEM NAME: Further Consideration – In the Matter of the Calculation of the Final Compensation of PIER'ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent.

PROGRAM: Customer Account Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should adopt in part and amend in part the Proposed Decision.

Respondent Spaccia argues that the Board of Administration should adopt the portion of the Proposed Decision under review by the Board at this hearing.

Respondent City of Bell argues that the Board of Administration should adopt in part and amend in part the Proposed Decision.

PROCEDURAL SUMMARY

Respondent Pier'Angela Spaccia (Respondent Spaccia) was employed by the Respondent City of Bell (Respondent City) first as an Assistant to the Chief Administrative Officer, and later as the Assistant Chief Administrative Officer. She was a miscellaneous member of CalPERS. On September 28, 2010, Respondent Spaccia filed an application for service retirement pending industrial disability retirement. Respondent Spaccia requested that her CalPERS service retirement allowance be based on a final compensation of \$28,582.44 per month, plus employer paid contributions to a deferred compensation plan.

CalPERS staff reviewed the circumstances of Respondent Spaccia's employment and determined that the salary claimed by her was not set forth in a "publicly available pay schedule", as required by law. Therefore, none of her remuneration from Respondent City could be used in determining her final compensation. CalPERS staff also reviewed the circumstances of Respondent Spaccia's purchase of five years of Additional Retirement Service Credit (ARSC), and in a separate determination letter informed Respondent Spaccia that it would disallow the ARSC purchase because it was made directly by the Respondent City with City funds. Respondent Spaccia appealed both these determinations.

Following four days of hearing, the Administrative Law Judge (ALJ) issued a Proposed Decision in which he found that Respondent Spaccia's first contract with Respondent City at \$8,526.00 per month could be used as her publicly available payrate and should be used by CalPERS in determining her final compensation for the purpose of calculating her service retirement. The ALJ also found that CalPERS was estopped from cancelling Respondent Spaccia's ARSC purchase. On April 17, 2013, the Proposed Decision came before the Board for its consideration and action. The Board approved the ALJ's finding that CalPERS should use the payrate of \$8,526.00 per month in calculating Respondent's pension. However, the Board rejected the ALJ's second ruling that upheld the purchase of ARSC with City funds, and set that issue alone for consideration at a Full Board Hearing.

The complete hearing record is attached, along with any written arguments submitted by the parties. Additionally, all parties have been notified of their right to present oral argument at the meeting on June 19, 2013.

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.

ALTERNATIVES

- A. 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 reviewing the record produced before the Administrative Law Judge and considering written and oral argument presented by the parties, hereby determines to adopt its own decision regarding Pier'Angela Spaccia's application for service retirement pending industrial disability retirement; RESOLVED FURTHER that this Board Decision shall be prepared in accordance with the Board's direction and presented to the Board for adoption at the Board's next monthly meeting.

- B. 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's Decision shall be effective 30 days following mailing of the decision.

C. 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: Staff's Argument
- Attachment B: Respondent(s) Arguments(s)
- Attachment C: Procedures for Full Hearing, Notice of Hearing and Proof of Service
- Attachment D: April 17, 2013 Board Agenda Item
- Attachment E: April 17, 2013 Board Hearing Transcript (excerpt)
- Attachment F: Administrative Hearing Transcripts
- Attachment G: CalPERS' Administrative Hearing Exhibits
- Attachment H: Respondents' Administrative Hearing Exhibits
- Attachment I: Additional Pleadings Filed Prior to Closure of Record
- Attachment J: Closing Briefs

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support