



Agenda Item 8a

October 16, 2013

ITEM NAME: Proposed Decision – In the Matter of the Application to Establish Reciprocity of FRED GUIDO, Respondent, and CITY OF CUDAHY, Respondent, Case No. 9711

PROGRAM: Retirement Account Services

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should reject the Proposed Decision and recommends that a Full Board Hearing be held.

Respondent argues that the Board of Administration should 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 Fred Guido was elected to the Cudahy City Council in 1970. His monthly pay in that position was \$150.00. He received CalPERS service credit for his service on the Cudahy City Counsel from 1970 to 1982 and his contributions to CalPERS were based on his pay of \$150.00 per month. From 1973 through 1977, Respondent worked in the Los Angeles County Sheriff's Department and earned service credit in the Los Angeles County Employees' Retirement Association ("LACERA"). Respondent worked in the private sector from 1977 until 1996, when he returned to employment with Los Angeles County. Respondent then worked for Los Angeles County until he retired in 2009.

Respondent received inaccurate communications from CalPERS stating that he had established reciprocity and therefore his CalPERS benefits could be based on his highest pay that he earned while he was a member of LACERA. Guido does not qualify for reciprocity under the Public Employees' Retirement Law, but he claims that he should be granted reciprocity based on principles of equitable estoppel. More specifically, he claims that, if he had known that his highest pay under LACERA could not be used to determine his CalPERS benefits, he would have

taken a CalPERS covered job near the end of his career, which would have substantially increased his CalPERS benefits by about the same amount as if he had qualified for reciprocity.

When Respondent filed an application for service retirement, he was informed by CalPERS that he was not entitled to reciprocity. As a result, his retirement benefit was much lower than he had anticipated. Respondent filed a timely appeal, contending that CalPERS should be estopped from denying him reciprocity. A hearing was held before an Administrative Law Judge (ALJ) of the OAH on November 13-15, 2012. On August 6, 2013, the ALJ issued a Proposed Decision recommending that the Board grant him reciprocity based on equitable estoppel.

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 August 6, 2013, concerning the application to establish reciprocity of Fred Guido; 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 August 6, 2013, concerning the application to establish reciprocity of Fred Guido, 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 August 6, 2013, concerning the application to establish reciprocity of Fred Guido, 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 to establish reciprocity of Fred Guido, 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 to establish reciprocity of Fred Guido.

BUDGET AND FISCAL IMPACTS: Not applicable

ATTACHMENTS

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

DONNA LUM
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Customer Account Services Division