

Agenda Item 10

December 18, 2013

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

PROGRAM: Customer Account Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should reject the Proposed Decision and deny the Application to Establish Reciprocity of Fred Guido.

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

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 Council 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. Respondent Guido does not qualify for reciprocity under the California 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 Office of Administrative Hearings (OAH) on November 13, 14 and 15, 2012. On August 6, 2013, the ALJ issued a Proposed Decision recommending that the Board grant him reciprocity based on equitable estoppel.

At its October 16, 2013, meeting, the Board considered the Proposed Decision of the Administrative Law Judge and concluded not to adopt it, but instead to decide the matter itself on the record after affording the parties the opportunity for further argument. 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 December 18, 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:

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

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: October 16, 2013 Board Agenda Item
- Attachment E: October 16, 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

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support