



Agenda Item 8f

October 21, 2015

ITEM NAME: Proposed Decision In the Matter of the Calculation of Final Compensation of RICHARD LEWIS, Respondent, and CITY OF SAN BERNARDINO, Respondent.

PROGRAM: Employer Account Management Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Richard Lewis (Respondent Lewis) 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 Lewis was a Fire Captain who was passed over for promotion to Battalion Chief. He filed a lawsuit against the City of San Bernardino that was resolved via a settlement agreement. The terms of the agreement provided that Respondent Lewis was to be paid in the future at a Battalion Chief rate of pay and was to be compensated for any overtime at a Fire Captain's rate of pay. Respondent Lewis was not given the job title of "Battalion Chief" and was not promoted. Respondent Lewis applied for service retirement in 2012. After reviewing his reported compensation, CalPERS determined that it could not include the Battalion Chief rate of pay nor his Employer Paid Member Contributions (EPMC) in his retirement calculations. CalPERS came to this conclusion because Respondent Lewis was not promoted to the position of Battalion Chief and continued to be paid overtime at a Fire Captain rate. Therefore, none of these payments qualified as "Temporary Upgrade Pay" under the law pertaining to special compensation. Respondent Lewis appealed this determination and a hearing before an Administrative Law Judge of the Office of Administrative Hearings took place on October 13 and 14, 2014, and February 25 and 26, 2015. On July 15, 2015, a Proposed Decision was issued granting Respondent Lewis' appeal.

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 July 15, 2015, concerning the appeal of Richard Lewis; 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 July 15, 2015, concerning the appeal of Richard Lewis, 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 July 15, 2015, concerning the appeal of Richard Lewis, 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 Richard Lewis, 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 Richard Lewis.

BUDGET AND FISCAL IMPACTS: Not applicable

ATTACHMENTS

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

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support