



ITEM NAME: Proposed Decision – In the Matter of the Appeal Regarding Retired Annuitant Employment of DAVID L. WHEELER, Respondent, and LOOMIS FIRE PROTECTION DISTRICT, Respondent.

PROGRAM: Benefit Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should adopt the Proposed Decision, as modified.

Respondent David L. Wheeler (Respondent Wheeler) argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Loomis Fire Protection District (Respondent District) argues that the Board of Administration should decline to 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 Wheeler retired from State service in 2006 and began receiving retirement benefits. In 2007, he was hired by the Loomis Fire Protection District to be its Fire Chief. At the time, Respondent District was not a CalPERS agency. In September 2010, Respondent District contracted with CalPERS for retirement benefits. Due to this change of circumstance, Respondent Wheeler was advised by CalPERS he needed to resign or reinstate into active CalPERS membership. Respondent Wheeler sought to maintain his Fire Chief position by various amendments to subsequent employment contracts. In November 2013, CalPERS finalized an audit which found that Respondent Wheeler's post-retirement employment violated the California Public Employees' Retirement Law (PERL) and that he was required to reimburse CalPERS for retirement benefits received from September 2010 to the date of his resignation. Respondent Wheeler and Respondent District appealed. The matter was heard by the Office of Administrative

Hearings on October 8, 9 and 10, 2014 and April 13 and 14, 2015. A Proposed Decision was issued on September 14, 2015, denying Respondents' appeals.

ALTERNATIVES

- A. For use if the Board decides to modify and adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517(c)(2)(C), which authorizes the Board to "make technical or other minor changes in the proposed decision", hereby modifies the Proposed Decision by replacing the name "Barbara Leak" with the name "Liz Burke" on page 14, paragraph 39, line 1, and hereby adopts as its own Decision the Proposed Decision dated September 14, 2015, as modified, concerning the appeals of David L. Wheeler and the Loomis Fire Protection District; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- 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 September 14, 2015, concerning the appeals of David L. Wheeler and the Loomis Fire Protection District; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- C. 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 September 14, 2015, concerning the appeals of David L. Wheeler and the Loomis Fire Protection District, 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.

- D. 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 September 14, 2015, concerning the appeals of David L. Wheeler and the Loomis Fire Protection District, 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.

E. 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 appeals of David L. Wheeler and the Loomis Fire Protection District, 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 appeals of David L. Wheeler and the Loomis Fire Protection District.

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