



Agenda Item 10a

November 18, 2015

ITEM NAME: Further Consideration – In the Matter of the Calculation of Final Compensation of BRUCE MALKENHORST, SR., Respondent, and CITY OF VERNON, Respondent.

PROGRAM: Employer Account Management Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should adopt the Proposed Decision in part and decline to adopt it in part.

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 Bruce Malkenhorst, Sr. (Respondent Malkenhorst) submitted an application for service retirement. CalPERS approved the application and Respondent Malkenhorst retired from service effective July 1, 2005. In 2012, CalPERS determined that Respondent Malkenhorst's compensation had been over-reported by Respondent City of Vernon (Respondent City) due to the inclusion of payments that do not meet the definition of "compensation earnable". CalPERS then recalculated Respondent Malkenhorst's final compensation.

Respondent Malkenhorst appealed this determination and the matter was heard by the Office of Administrative Hearings on August 25 through August 27, 2014 and September 3 and 4, 2014. A Proposed Decision was issued on July 14, 2015, both affirming in part and reversing in part CalPERS' determination.

At its September 17, 2015, meeting, the Board of Administration requested a Full Board Hearing in connection with the appeal of Respondent Malkenhorst. The Board of Administration considered the Proposed Decision of the Administrative Law Judge

(ALJ) 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 November 18, 2015.

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 concerning the appeal of Bruce Malkenhorst, Sr.; 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 July 14, 2015, concerning the appeal of Bruce Malkenhorst, Sr.; 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 appeal of Bruce Malkenhorst, Sr., 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 Bruce Malkenhorst, Sr.

ATTACHMENTS

- Attachment A: Staff's Argument
- Attachment B: Respondent's Argument and Request to Supplement the Administrative Record
- Attachment C: Procedures for Full Hearing, Notice of Hearing and Proof of Service
- Attachment D: September 17, 2015 Board Agenda Item
- Attachment E: Transcripts of Administrative Hearing and September 17, 2015 Board Meeting
- Attachment F: CalPERS Administrative Hearing Exhibits
- Attachment G: Respondent Bruce Malkenhorst, Sr.'s Administrative Hearing Exhibits
- Attachment H: Additional Pleadings Filed Prior to Closure of Record

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support