



## **Agenda Item 11a**

December 16, 2015

**ITEM NAME:** Further Consideration – In the Matter of the Final Compensation Calculation 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 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 use the Battalion Chief payrate in his retirement calculations. Specifically none of these settlement 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.

At its October 21, 2015, 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 16, 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 Richard Lewis; 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 15, 2015, concerning the appeal of Richard Lewis; 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 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.

**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 21, 2015 Board Agenda Item

Attachment E: Transcripts of Administrative Hearing and October 21, 2015 Board Meeting

Attachment F: CalPERS Exhibits

Attachment G: Respondent's Exhibits

Attachment H: Pleadings and Other Court Filings

Attachment I: Orders

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support