

BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Calculation of Final  
Compensation of:

RICHARD LEWIS,

Respondent,

And

CITY OF SAN BERNARDINO,

Respondent.

Case No. 2014-0256

OAH No. 2014040945

ORDER DENYING "MOTION  
REGARDING JURISDICTIONAL  
CHALLENGE" FILED BY  
RESPONDENT RICHARD LEWIS

Respondent Richard Lewis was employed as a safety member with respondent City of San Bernardino (the City.) On October 10, 2012, Mr. Lewis signed an application for service retirement pending industrial disability retirement. He retired for industrial disability effective November 30, 2012, with over 30 years of service credit. He has been receiving a retirement allowance since that date.

On April 22, 2014, the California Public Employees' Retirement System (CalPERS) filed a Statement of Issues to evaluate Mr. Lewis's "final compensation" used in determining his service retirement allowance. The Statement of Issues alleges that he received "Temporary Upgrade Pay" and "Employer Paid Member Contributions" that should not be included in the calculation of his final compensation under the Public Employees' Retirement Law (PERL.) A hearing on these issues has been scheduled for October 13, 2014.

On May 14, 2014, Mr. Lewis filed a document titled "Richard Lewis' Notice and Motion Regarding Jurisdictional Challenge; Notice of Defense, Affirmative Defenses, and New Matter Filed Concurrently." CalPERS filed an opposition on May 29, 2014.

Respondent Lewis' papers assert that he has a vested right to the pension he is currently receiving; that CalPERS has no jurisdiction to "contradict the City of San Bernardino's decisions on job duties, compensation, pension benefits, and related issues;" that only the Superior Court has jurisdiction to "reduce" his "vested pension;" that he "does not submit and does not consent to CalPERS' jurisdiction" over the Statement of Issues; that CalPERS should be estopped under the principles of issue preclusion (both res judicata and collateral estoppel) from "re-litigating" a "civil service and discrimination dispute that it previously accepted"; that CalPERS is violating the "parole evidence rule"; and that he should receive attorney fees for having to respond to CalPERS' actions.

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In response, CalPERS asserted that it has jurisdiction over all the matters identified in the Statement of Issues; that respondent appears to be requesting a dismissal of the Statement of Issues on jurisdictional grounds, which is not permitted prior to a hearing on the merits; that CalPERS has the responsibility to administer the Public Employees' Retirement Law (PERL) and evaluate the issues of respondent's "final compensation"; that the City contracted with CalPERS and agreed to be subject to the PERL; and it opposed the other claims made by respondent.


Resolution of these issues requires an evidentiary hearing. The issues can be appropriately addressed during the administrative hearing and resolved by the administrative law judge in his or her proposed decision following the hearing.

To the extent respondent intends his papers to constitute a motion to dismiss the Statement of Issues prior to the hearing, that motion is denied. The CalPERS' Board of Administration (the board) has the authority to hold a hearing to address questions involving "any right, benefit, or obligation of a person" receiving a pension under the PERL, and that hearing is to be held in accordance with the Administrative Procedure Act (APA), under Government Code section 11500, et seq. (Govt. Code, § 20134; Cal. Code Regs., tit. 2, § 555.4.) During the administrative hearing, the parties will have the opportunity to present their cases, to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, and rebut any evidence against them. (Govt. Code, § 11513, subd. (b).) After the administrative law judge has issued a proposed decision and the board has been given its opportunity to act on the proposed decision, the agency will issue a final decision under Government Code section 11517, subdivision (c). That decision will be subject to judicial review under Code of Civil Procedure section 1094.5. (Govt. Code, § 11523.)

Respondent appears to ask the Office of Administrative Hearings to dismiss the action before it is heard. An administrative law judge lacks the authority to issue a final decision or to directly dismiss an agency's accusatory pleading. (Govt. Code, § 11517; *Frost v. State Personnel Board* (1961) 190 Cal. App.2d 1; *Kramer v. State Board of Accountancy* (1962) 200 Cal. App.2d 163, 175-176.) While an administrative law judge has the authority to issue a proposed decision recommending dismissal prior to a hearing and to forward that proposed decision directly to the board if the administrative law judge has concluded there were jurisdictional defects the pleadings (*Automotive Management Group v. New Motor Vehicle Bd.* (1993) 20 Cal.App.4th 1002, 1014), respondent has not established that the pleadings are jurisdictionally defective or that the board lacks the authority to hear this matter. The pre-hearing motion regarding jurisdiction is denied, without prejudice. Respondent may present his claims during the hearing.

IT IS SO ORDERED.

DATED: June 13, 2014

  
BETH FABER JACOBS  
Acting Presiding Administrative Law Judge  
Office of Administrative Hearings

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### DECLARATION OF SERVICE

Case Name: Lewis, Richard

OAH No.: 2014040945

I, Faith Dix, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 1350 Front Street, Suite 3005, San Diego, CA 92101. On June 13, 2014, I served a copy of the following document(s) in the action entitled above:

#### ORDER DENYING "MOTION REGARDING JURISDICTIONAL CHALLENGE" FILED BY RESPONDENT RICHARD LEWIS

to each of the person(s) named below at the addresses listed after each name by the following method(s):

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City of San Bernardino  
Office of the City Attorney  
300 North "D" St. 6th Floor  
San Bernardino, CA 92418

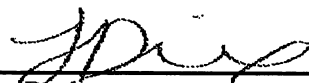
Wesley E. Kennedy  
Senior Staff Counsel  
CalPERS  
P.O. Box 942707  
Sacramento, CA 94229-2707

John M. Jensen  
Attorney at Law  
11500 W. Olympic Blvd., Suite 550  
Los Angeles, CA 90064

VIA FACSIMILE (909) 384-5238,  
(310) 477-7090, and (916) 795-3659

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at San Diego, California on June 13, 2014.

  
\_\_\_\_\_  
Faith Dix, Declarant

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