



Agenda Item 8g

December 16, 2015

ITEM NAME: Proposed Decision – In the Matter of the Calculation of Final Compensation of TIMOTHY BACON, and DARRYL HURT, Respondents, and CITY OF RIVERSIDE, Respondent.

PROGRAM: Employee Account Management Division

ITEM TYPE: Action

PARTIES' POSITIONS

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

Respondent Timothy Bacon (Respondent Bacon) and Respondent Darryl Hurt (Respondent Hurt) argue 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 City of Riverside (Respondent City) employed Respondent Bacon and Respondent Hurt as police lieutenants. Respondent Bacon and Respondent Hurt filed federal lawsuits against Respondent City alleging they were wrongfully passed over for promotion to captain. The matters were resolved via settlement agreements which provided that Respondent City would award Respondent Bacon and Respondent Hurt back pay as if they had been promoted, would pay Respondent Bacon and Respondent Hurt all salary and benefits in the future at a captain's rate, would purchase service credits to allow Respondent Bacon and Respondent Hurt to retire with 30 years of service, and would place Respondent Bacon and Respondent Hurt on administrative leave, until such time as Respondent Bacon and Respondent Hurt would retire. CalPERS reviewed Respondent Bacon and Respondent Hurt's compensation in the form of a "special salary adjustment" and determined that it is not eligible to be included in the calculation of final compensation. Respondent Bacon and Respondent Hurt appealed this determination, and the matter was heard by the Office of Administrative Hearings on May 28, 2015. A Proposed Decision

was issued on October 22, 2015, granting Respondent Bacon and Respondent Hurt's 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 October 22, 2015, concerning the appeals of Timothy Bacon and Darryl Hurt; 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 October 22, 2015, concerning the appeals of Timothy Bacon and Darryl Hurt, 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 October 22, 2015, concerning the appeals of Timothy Bacon and Darryl Hurt, 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 appeals of Timothy Bacon and Darryl Hurt, 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 Timothy Bacon and Darryl Hurt.

BUDGET AND FISCAL IMPACTS: Not applicable

ATTACHMENTS

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

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support