



Agenda Item 9a

December 16, 2015

ITEM NAME: Petition for Reconsideration -- 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 deny the Petition for Reconsideration.

Respondent David L. Wheeler argues that the Board of Administration should grant the Petition for Reconsideration.

Respondent Loomis Fire Protection District argues that the Board of Administration should grant the Petition for Reconsideration.

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 David L. Wheeler (Respondent Wheeler) retired from State service in 2006 and began receiving retirement benefits. In 2007, he was hired by the Loomis Fire Protection District (Respondent 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.

The Board at its October 21, 2015, meeting adopted the Proposed Decision of the Administrative Law Judge. The Decision denied Respondent Wheeler and Respondent District's appeals.

A Stay of Execution in the above matter has been granted so that the Petition for Reconsideration may be presented to the Board.

Respondent Wheeler and Respondent District have been notified of the date of the Board meeting and of their opportunity to submit written argument in advance of the Board meeting on December 16, 2015.

ALTERNATIVES

A. For use if the Board decides to deny the Petition for Reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System denies the Petition for Reconsideration submitted by David L. Wheeler and Loomis Fire Protection District concerning the Board's decision of October 21, 2015; the Board's Decision of October 21, 2015, is effective immediately and the Respondents have 30 days to appeal to the courts.

B. For use if the Board decides to grant the Petition for Reconsideration and decide the matter upon the record. A transcript of the hearing would be provided to each Board member, and the Board would receive written and/or oral argument at a subsequent meeting and adopt a new decision upon reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, grants the Petition for Reconsideration submitted by David L. Wheeler and Loomis Fire Protection District concerning the Board's Decision dated October 21, 2015; RESOLVED FURTHER that the reconsideration shall be made at a subsequent Board meeting, after notice is given to all affected parties, 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.

C. For use if the Board decides to grant the Petition for Reconsideration and assign the case to an Administrative Law Judge, subject to the procedures provided in Government Code section 11517. The matter would be remanded 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 grants the Petition for Reconsideration submitted by David L. Wheeler and Loomis Fire Protection District and concerning the Board's Decision dated October 21, 2015; RESOLVED FURTHER that the reconsideration shall be scheduled for hearing with the Office of Administrative Hearings, after notice is given to all affected parties, where the Administrative Law Judge may base his or her findings upon the record produced before the Administrative Law Judge at prior hearing(s) and any additional evidence including written and oral argument presented by the parties as may be permitted.

BUDGET AND FISCAL IMPACTS: Not applicable

ATTACHMENTS

- Attachment A: Respondents' Petition for Reconsideration
- Attachment B: Staff's Argument
- Attachment C: Respondent(s) Argument(s)
- Attachment D: Decision
- Attachment E: Proposed Decision

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support