



## Agenda Item 10a

February 18, 2016

**ITEM NAME:** Further Consideration – In the Matter of the Calculation of Final Compensation of TIMOTHY BACON, Respondent, DARRYL HURT, Respondent, and CITY OF RIVERSIDE, Respondent.

**PROGRAM:** Employee Account Management Division

**ITEM TYPE:** Action

### **PARTIES' POSITIONS**

Staff argues that the Board of Administration (Board) should decline to adopt the Proposed Decisions.

Respondents Timothy Bacon and Darryl Hurt (Respondents Bacon and Hurt) argue that the Board of Administration should adopt the Proposed Decisions.

### **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 Respondents Bacon and Hurt as police lieutenants. Respondents Bacon and Hurt filed federal lawsuits against Respondent City alleging they were wrongfully passed over for promotion to captain. The federal lawsuits were resolved via settlement agreements that provided Respondent City would award, retroactively and going forward, Respondents Bacon and Hurt additional compensation per the captain pay scale. In return, Respondents Bacon and Hurt would immediately go on administrative leave and retire thereafter. Respondent City reported the additional compensation as a "special salary adjustment." CalPERS reviewed Respondents Bacon and Hurt's additional compensation and determined that it was not eligible to be included in the calculation of their respective final compensation.

Respondents Bacon and Hurt both appealed the determination, and the matter was heard by the Office of Administrative Hearings on May 28, 2015. Proposed Decisions were issued on October 22, 2015, granting Respondents Bacon and Hurt's appeals.

At its December 16, 2015, meeting, the Board considered the Proposed Decisions of the Administrative Law Judge and concluded not to adopt them, but instead to decide the matter itself on the record after affording the parties the opportunity for further argument. The complete hearing record and written arguments submitted by the parties are attached. Additionally, all parties have been notified of their right to present oral argument at the Board's meeting on February 18, 2016.

## **ALTERNATIVES**

- A. For use if the Board decides not to adopt the Proposed Decisions, and to decide the case upon the record and written and oral argument presented by the parties.

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 appeals of Timothy Bacon and Darryl Hurt, as well as interested parties; 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 Decisions 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 Decisions dated October 22, 2015, concerning the appeals of Timothy Bacon and Darryl Hurt, as well as interested parties; 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 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, as well as interested parties.

#### **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: December 16, 2015 Board Agenda Item
- Attachment E: Transcripts of Administrative Hearing and December 16, 2015 Board Meeting
- Attachment F: CalPERS Exhibits
- Attachment G: Bacon/Hurt Exhibits
- Attachment H: Additional Pleadings Filed Prior To Closure of the Record

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support