



Board of Administration Agenda Item 8d

March 16, 2016

Item Name: Proposed Decision – In the Matter of the Optional Membership Election and Mandatory Arrears for CALVIN SUNG, Respondent, ANDREA F. GRAHAM, Respondent, and CALIFORNIA STATE ASSEMBLY COMMITTEE ON RULES, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondents Calvin Sung (Respondent Sung) and Andrea F. Graham (Respondent Graham) argue that the Board of Administration should not adopt the Proposed Decision.

Respondent California State Assembly Committee on Rules (Assembly) 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

Assembly hired Respondent Sung and Respondent Graham. As legislative employees, Respondent Sung and Respondent Graham were excluded from CalPERS membership unless they chose to become members by completing and signing an Optional Membership Election Form. Respondent Sung and Respondent Graham completed and signed election forms. CalPERS staff used the date the election forms were signed as being the effective date of membership in CalPERS. The Assembly challenged this interpretation of the applicable statute, Government Code section 20324, arguing that the effective date of membership should be the date that the election forms were filed or received by CalPERS. The matter was heard by the Office of Administrative Hearings on January 5, 2016. A Proposed Decision was issued on January 20, 2016, granting the appeal of the Assembly.

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 January 20, 2016, concerning the appeal of the Assembly; 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 January 20, 2016, concerning the appeal of the Assembly, 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 January 20, 2016, concerning the appeal of the Assembly, 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 appeal of the Assembly, 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 the Assembly.

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