



# Board of Administration Agenda Item 10a

April 20, 2016

**ITEM NAME:** Further Consideration – In the Matter of the Appeal Regarding Membership Exclusion of Foundation Employees by SANTA CLARA COUNTY HEALTH AUTHORITY, Respondent, and KATHLEEN KING, Respondent.

**PROGRAM:** Employer Account Management Division

**ITEM TYPE:** Action

## **PARTIES' POSITIONS**

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

Respondent Santa Clara County Health Authority (Respondent Authority) argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Kathleen King (Respondent King) argues that the Board of Administration should decline to 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**

After CalPERS audit staff conducted a Public Agency Review of Respondent Authority, CalPERS determined that all employees of an affiliated agency, Santa Clara Family Health Foundation, Inc., who had been reported to CalPERS as employees of Respondent Authority, were excluded from CalPERS membership.

Respondent Authority and Respondent King appealed the determination regarding membership exclusion. The matter was heard by the Office of Administrative Hearings on August 26, 2015. A Proposed Decision was issued on December 3, 2015, denying the appeal.

At its February 18, 2016, meeting, the Board considered the Proposed Decision of the Administrative Law Judge and concluded not to adopt it, but instead to decide the matter itself on the record after affording the parties the opportunity for further argument. The complete hearing record is attached, along with any written arguments submitted by the parties. Additionally, all parties have been notified of their right to present oral argument at the meeting on April 20, 2016.

## ALTERNATIVES

- A. 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 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 Santa Clara County Health Authority and Kathleen King; 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 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 December 3, 2015, concerning the appeals of Santa Clara County Health Authority and Kathleen King; 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 appeals of Santa Clara County Health Authority and Kathleen King, 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 Santa Clara County Health Authority and Kathleen King.

## **ATTACHMENTS**

Attachment A: Staff's Argument

Attachment B: Respondent Authority's Argument

Attachment C: Respondent King's Argument

Attachment D: Procedures for Full Hearing, Notice of Hearing and Proof of Service

Attachment E: February 18, 2016 Board Agenda Item

Attachment F: Transcripts of Administrative Hearing and February 18, 2016 Board Meeting

Attachment G: CalPERS Exhibits

Attachment H: Respondent Authority's Exhibits

Attachment I: Respondent King's Exhibits

Attachment J: Other Pleadings

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Customer Services and Support