



Board of Administration Agenda Item 8g

June 15, 2016

Item Name: Proposed Decision – In the Matter of the Statement of Issues of: ALBERT TROMP, GEORGE HOPKINS, DAN BURLINGHAM, PATRICK REILLY, RICHARD WILLIAMS, DAVID DARROW, ROBIN SHERWOOD, ROBERT ROACH AND VICTOR HERNANDEZ, Respondents, and CITY OF EL MONTE, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondents Albert Tromp, George Hopkins, Dan Burlingham, Patrick Reilly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach, and Victor Hernandez (Respondents) argue that the Board of Administration should decline to adopt the Proposed Decisions.

Respondent City of El Monte (City) argues that the Board of Administration should decline to 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

Respondents were employed by the City and received "Master Officer Pay" (MOP), an item of compensation for a one-year period. The MOP was reported as an item of special compensation. CalPERS determined the MOP is not an item of special compensation because it failed to meet the definition of "Master Police Officer" pay under Title 2, California Code of Regulations, section 571(a) because it did not require performance of certain duties, did not look at the performance standards of the officers, and did not require specialty assignment. CalPERS determined the MOP was not historically consistent under section 571(b)(6), was paid exclusively in the final

compensation period as per section 571(b)(7), constituted final settlement pay under sections 570 and 571(b)(8) and resulted in an unfunded liability under section 571(b)(9).

Respondents appealed this determination and the matters were consolidated and heard by the Office of Administrative Hearings on December 7, 2015.

The Administrative Law Judge (ALJ) agreed that the MOP failed to meet the definition of Master Officer Program pay, as specified in section 571(a)(1) although it meets all other requirements. Based on its failure to meet the definition of section 571(a), the ALJ held the MOP is not a reportable item of special compensation.

Alternatives

- A. 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 April 21, 2016, concerning the appeals of Albert Tromp, George Hopkins, Dan Burlingham, Patrick Reilly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach, and Victor Hernandez; 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 Decisions, and to decide the cases upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decisions dated April 21, 2016, concerning the appeals of Albert Tromp, George Hopkins, Dan Burlingham, Patrick Reilly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach, and Victor Hernandez, hereby rejects the Proposed Decisions and determines to decide the matters 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 Decisions dated April 21, 2016, concerning appeals of Albert Tromp, George Hopkins, Dan Burlingham, Patrick Reilly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach, and Victor Hernandez, hereby rejects the Proposed Decisions and refers the matters 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 Albert Tromp, George Hopkins, Dan Burlingham, Patrick Reilly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach, and Victor Hernandez, 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 Albert Tromp, George Hopkins, Dan Burlingham, Patrick Reilly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach, and Victor Hernandez.

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