



Board of Administration Agenda Item 9d

November 16, 2016

Item Name: Proposed Decision – In the Matter of the Calculation of the Final Compensation of DESI ALVAREZ, Respondent, and CHINO BASIN WATERMASTER, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should adopt in part and decline in part the Proposed Decision.

Respondent Desi Alvarez (Respondent Alvarez) 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

Respondent Chino Basin Watermaster (Respondent Watermaster) entered into an "at will" employment agreement with Respondent Alvarez effective May 3, 2011, as the Chief Executive Officer (CEO) of Respondent Watermaster. Respondent Alvarez, however, was terminated as CEO as of November 9, 2011, and received "severance compensation" from November 9, 2011 to May 4, 2012. Respondent Watermaster reported an annual salary of \$228,000, which calculates to a monthly salary of \$19,000, from May 3, 2011 through May 4, 2012.

CalPERS determined the reported compensation, for the entire year, did not qualify as "payrate" because the compensation was not provided pursuant to a publicly available pay schedule. CalPERS used the payrate for Respondent Alvarez's previous employer to calculate the amount of his final compensation. CalPERS also determined the "severance compensation," paid from November 9, 2011 to May 4, 2011, did not qualify as "compensation earnable" and is not reportable because it constitutes "final settlement pay."

Respondent Alvarez appealed this determination and the matter was heard by the Office of Administrative Hearings on April 11, 12 and 13, 2016. A Proposed Decision was issued on September 7, 2016, agreeing that the \$228,000 reported as annual compensation did not

qualify as "payrate" because it was not provided pursuant to a publicly available pay schedule, and denying that part of the appeal. The Proposed Decision, however, also held that Respondent Alvarez remained an employee after November 11, 2011, thereby granting that part of the appeal.

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 September 7, 2016, concerning the appeal of Desi Alvarez; **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 September 7, 2016, concerning the appeal of Desi Alvarez, 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 September 7, 2016, concerning the appeal of Desi Alvarez, 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 Desi Alvarez, 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 Desi Alvarez.

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