



Board of Administration Agenda Item 8s

February 15, 2017

Item Name: Proposed Decision – In the Matter of the Appeal Regarding the Calculation of Final Compensation Involving DANIEL A. HARP, Respondent, and SAN BERNARDINO COUNTY, Respondent, and SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Daniel A. Harp (Respondent Harp) 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 Harp established membership with CalPERS in October 1973 and has approximately 5.614 years of CalPERS service credit. In October 1980, Respondent Harp separated from employment with a CalPERS contracting agency but retained his CalPERS membership. Since November 1980, Respondent Harp has been a member with Respondent San Bernardino County Employees' Retirement Association (SBCERA) which entered a Reciprocal Agreement with CalPERS on October 1, 1957. Respondent Harp was last employed by San Bernardino County (County) as its Assistant Assessor Recorder. Respondent Harp applied for service retirement with CalPERS with an effective retirement date of January 5, 2015, and has been receiving his retirement allowance from that date. CalPERS reviewed Respondent Harp's final compensation reported by County and determined that the reported Auto Allowance, Cellular Device Allowance, Cash Out Holiday payments, Cash Out Vacation payments, Retirement Excess Cash payments and Cash Out Admin Pay should not be included in Respondent Harp's final compensation for purposes of determining his CalPERS retirement allowance. Respondent Harp appealed this determination, and the matter was heard by the Office of Administrative Hearings on November 22, 2016. A Proposed Decision was issued on December 19, 2016, denying the appeal.

Alternatives

- A. For use if the Board decides to modify and adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517(c)(2)(C), which authorizes the Board to "make technical or other minor changes in the proposed decision", hereby modifies the Proposed Decision, replacing "Government Code section 60630" with "Government Code section 20630" on page eleven of the Proposed Decision and replacing "Government Code section 60636" with "Government Code section 20636" on page eleven of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated December 19, 2016, concerning the appeal of Daniel A. Harp; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- 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 19, 2016, concerning the appeal of Daniel A. Harp; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- C. 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 December 19, 2016, concerning the appeal of Daniel A. Harp, 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.

- D. 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 December 19, 2016, concerning the appeal of Daniel A. Harp, 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.

- E. 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 Daniel A. Harp, 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 Daniel A. Harp.

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