

March 15, 2017

Item Name: Proposed Decision – In the Matter of the Appeal Regarding CalPERS Membership of PETER H. VAN AUKEN, Respondent and COUNTY OF PLACER, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Peter H. Van Auken (Respondent Van Auken) argues that the Board of Administration should adopt the Proposed Decision.

Respondent County of Placer (Respondent Placer) 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 Van Auken submitted a Request for Service Credit Cost Information - Service Prior to Membership, CETA & Fellowship form to CalPERS, requesting to purchase service with Respondent Placer for the period from September 6, 1988 through June 30, 1994. CalPERS staff conducted a review of the working relationship between Respondent Van Auken and Respondent Placer during the period in question, and determined that Respondent Van Auken was a common law employee of Respondent Placer rather than an independent contractor. As an employee, Respondent Van Auken should be brought into CalPERS membership for that time period.

Respondent Placer appealed this determination and the matter was heard by the Office of Administrative Hearings on July 5, 2016. A Proposed Decision was issued on January 17, 2017, denying 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 January 17, 2017, concerning the appeal of County of Placer; 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 17, 2017, concerning the appeal of County of Placer, 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 17, 2017, concerning the appeal of County of Placer, 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 County of Placer, 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 County of Placer.

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

