



Board of Administration Agenda Item 8r

April 19, 2017

Item Name: Proposed Decision – In the Matter of the Appeal Regarding CalPERS Membership of MATTHEW L. FOSKETT, Respondent, by CITY OF LODI, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent City of Lodi (Respondent City) argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Matthew L. Foscett (Respondent Foscett) 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

Following his retirement for service from Respondent City of Lodi as its Rates and Resources Manager, Respondent Foscett entered into a consulting agreement with Respondent City. Respondent Foscett's scope of work as a consultant was nearly identical to his duty statement as a Rates and Resources Manager employee. Upon review of the consulting agreement, CalPERS determined that Respondent Foscett was serving in an employment relationship with Respondent City during the period he was purportedly providing consulting services as an independent contractor, and determined that he was subject to the working-after-retirement provisions and restrictions of the California Public Employees' Retirement Law. Respondent City appealed this determination and the matter was heard by the Office of Administrative Hearings on December 15, 2016. Respondent Foscett did not appear and the case proceeded as a default under Government Code section 11520 as to him only. A Proposed Decision was issued on March 10, 2017, denying Respondent City's 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 March 10, 2017, concerning the appeal of City of Lodi; 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 March 10, 2017, concerning the appeal of City of Lodi, 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 March 10, 2017, concerning the appeal of City of Lodi, 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 City of Lodi, 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 City of Lodi.

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