December 19, 2018

Item Name: Proposed Decision – In the Matter of the Application for Industrial Disability Retirement of GENE JOSEPH LOMBARDI, Respondent, and OAKLAND UNIFIED SCHOOL DISTRICT, Respondent.
Program: Benefit Services Division
Item Type: Action

Parties’ Positions
Staff argues that the Board of Administration should adopt the Proposed Decision, as modified.
Respondent Gene Joseph Lombardi’s (Respondent Lombardi) position is included in Attachment C, if any.

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 Lombardi submitted an application for industrial disability retirement based on an orthopedic (back) condition. CalPERS denied the application. Respondent Lombardi appealed this determination and the matter was heard by the Office of Administrative Hearings on October 25, 2018. Due to Respondent Oakland Unified School District’s failure to appear, the case proceeded as a default under Government Code section 11520 as to that party only. A Proposed Decision was issued on November 8, 2018, granting 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, by changing the words “State Safety member” to “Local Safety member” on page two, paragraph one of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated November 8, 2018, as modified, concerning the
appeal of Gene Joseph Lombardi; 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 November 8, 2018, concerning the appeal of Gene Joseph Lombardi; 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 November 8, 2018, concerning the appeal of Gene Joseph Lombardi, 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 November 8, 2018, concerning the appeal of Gene Joseph Lombardi, 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 Gene Joseph Lombardi, 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 Gene Joseph Lombardi.
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