June 19, 2019

Item Name: Proposed Decision – In the Matter of the Appeal Regarding the Temporary Transit Employee Exemption of the Public Employees' Pension Reform Act of 2013 by SANTA CLARA VALLEY TRANSIT AUTHORITY, Respondent, and LA KEYSHA DORSEY, JESSE GOMES, AARON GWIN, LLOYD JACKSON II, TONI O’CONNOR, BUDDY ROARK, Respondents, and SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, Respondent, and STATE OF CALIFORNIA, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties’ Positions

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

Respondent Santa Clara Valley Transit Authority’s (Respondent VTA) position is included in Attachment C, if any.

Respondents La Keysha Dorsey, Jesse Gomes, Aaron Gwin, Lloyd Jackson II, Toni O’Connor, Buddy Roark’s (Individual Respondents) position is included in Attachment C, if any.

Respondent San Francisco Bay Area Rapid Transit District’s (Respondent BART) 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

Shortly after the California Public Employees’ Pension Reform Act of 2013 (PEPRA) took effect, the United States Department of Labor (DOL) advised that it would not issue much-needed federal transit grants to various California transit agencies because DOL determined that PEPRA impaired the rights of transit employees under federal law. In response, the California Legislature enacted Assembly Bill 1222 (AB 1222), an urgency amendment to PEPRA, that temporarily exempted transit workers from the pension reform law so that federal transit funds would flow to California transit agencies while the State sued DOL to uphold PEPRA’s reforms.
Once a United States District Court ruled in favor of the State and found that PEPRA does not impair federal labor protections, CalPERS determined that the exemption period had ended for transit workers, and that PEPRA would apply to them on a going-forward basis. Respondent VTA and the six Individual Respondents who are subject to PEPRA, appealed, arguing that AB 1222 creates a permanent exemption from PEPRA for transit workers who were hired before the date of the District Court decision.

The matter was heard by the Office of Administrative Hearings on December 17, 2018 and December 18, 2018. No appearance was made on behalf of Respondent BART. A Proposed Decision was issued on April 29, 2019, affirming CalPERS’ determination and denying the appeal. AB 1222, the Administrative Law Judge held, created only a temporary exemption from PEPRA for certain transit workers, an exemption that ended when the District Court ruled that PEPRA did not impair the bargaining rights of transit employees.

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 April 29, 2019, concerning the appeal of Santa Clara Valley Transit Authority; 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 April 29, 2019, concerning the appeal of Santa Clara Valley Transit Authority, 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 April 29, 2019, concerning the appeal of Santa Clara Valley Transit Authority, 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 Santa Clara Valley Transit Authority, 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 Santa Clara Valley Transit Authority.

**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