



## Board of Administration

# Agenda Item 9a4

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**September 18, 2019**

**Item Name:** Proposed Decision – In the Matter of the Appeal Regarding the Final Compensation Calculation of KATHRYN A. GERK, Respondent, and CITY OF RICHMOND, Respondent.

**Program:** Employer Account Management Division

**Item Type:** Action

### **Parties' Positions**

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

Respondent Kathryn A. Gerk's (Respondent Gerk) 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**

CalPERS Office of Audit Services performed an audit of multiple public agencies, including Respondent City. As a result of the audit, CalPERS determined that the compensation reported by Respondent City, identified as Off-Salary-Schedule Pay, on behalf of Respondent Gerk did not meet the definition of compensation earnable as provided in Government Code section 20636. Respondent Gerk was notified by CalPERS that she received an overpayment of benefits resulting from the incorrectly reported Off-Salary Schedule Pay. Respondent Gerk appealed CalPERS' determination and the matter was heard by the Office of Administrative Hearings on July 10, 2019. Respondent City did not appear at the hearing. Due to Respondent City'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 July 16, 2019, affirming CalPERS' determination and denying the appeal. The Proposed Decision found that CalPERS properly reduced Respondent Gerk's retirement allowance and recovered the overpayment of retirement benefits that resulted from Respondent City improperly reporting compensation that did not qualify as "compensation earnable."

## 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 July 16, 2019, concerning the appeal of Kathryn A. Gerk; 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 July 16, 2019, concerning the appeal of Kathryn A. Gerk, 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 July 16, 2019, concerning the appeal of Kathryn A. Gerk, 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 Kathryn A. Gerk, 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 Kathryn A. Gerk.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Donna Ramel Lum  
Deputy Executive Officer  
Customer Services and Support