



Board of Administration

Agenda Item 9a6

September 18, 2019

Item Name: Amended Proposed Decision Following Remand – In the Matter of the Appeals Regarding the Final Compensation Calculations of MARK E. BILLS and JUDI L. CUTAIA, Respondents, and CITY OF DAVIS, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondents Mark E. Bills' (Respondent Bills) and Judi L. Cutaia's (Respondent Cutaia) or (Respondents), collectively, positions are 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

Respondents Bills and Cutaia retired from the City of Davis in 2012 and 2014, respectively. In October 2016, CalPERS' Office of Audit Services (OFAS) conducted an audit of the City of Davis and found that certain longevity payments, based on unused cafeteria benefits, reported as special compensation to CalPERS for the Respondents, did not qualify as reportable income. CalPERS notified Respondents that it was adjusting their final compensations in order to correct the erroneous reportings which would reduce their pensions going forward. CalPERS also calculated overpayment amounts for each of the Respondents which they were asked to repay to CalPERS.

CalPERS determined that the payments made by Respondent City of Davis to Respondents as longevity pay (cafeteria cash outs) could not be considered in determining Respondents' CalPERS retirement benefits. Respondents appealed this determination. The matter was heard by the Office of Administrative Hearings (OAH) on July 19, 2018. Due to Respondent City of Davis' 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 October 30, 2018, affirming the determination and denying the appeals.

The CalPERS Board of Administration, at its regular meeting on December 19, 2018, voted to remand the Proposed Decision for the taking of additional evidence. Specifically, the Board requested that the ALJ receive additional evidence “to determine whether the language of the Legal Conclusion 6 is accurate.”

Parties filed a Joint Stipulation for Remand Hearing by Documentary Evidence on June 17, 2019, and an Order granting a Request for Decision on Written Submission was issued on June 21, 2019.

An Amended Proposed Decision Following Remand was issued on July 24, 2019, correcting the typographical errors in Legal Conclusion 6 and denying Respondents’ appeals and affirming CalPERS’ determination that the payments made by Respondent City of Davis to Respondents as longevity pay (cafeteria cash outs) shall not be considered in the determination of Respondents’ retirement benefits from CalPERS and that CalPERS is entitled to recoup the overpayments made to Respondents subject to the three-year statutory limitation.

Alternatives

- A. For use if the Board decides to adopt the Amended Proposed Decision Following Remand as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System hereby adopts as its own Decision the Amended Proposed Decision Following Remand dated July 24, 2019, concerning the appeals of Mark E. Bills and Judi L. Cutaia; 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 Amended Proposed Decision Following Remand, 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 Amended Proposed Decision Following Remand dated July 24, 2019, concerning the appeals of Mark E. Bills and Judi L. Cutaia, hereby rejects the Amended Proposed Decision Following Remand 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 Amended Proposed Decision Following Remand dated July 24, 2019, concerning the appeals of Mark E. Bills and Judi L. Cutaia, hereby rejects the

Amended Proposed Decision Following Remand 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 appeals of Mark E. Bills and Judi L. Cutaia, 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 appeals of Mark E. Bills and Judi L. Cutaia.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Amended Proposed Decision following remand

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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