Board of Administration

Agenda Item 9a3

November 20, 2019

Item Name: Proposed Decision – In the Matter of the Appeal of Membership Determination of JAMES J. GREGG, Respondent, and CITY OF BEAUMONT, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should remand the Proposed Decision for the taking of further evidence.

Respondent James J. Gregg's (Respondent Gregg) 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 received an ethics complaint in 2017 and determined that Respondent Gregg was an independent contractor of Respondent City for the period of July 2006 through June 2015, and therefore not entitled to CalPERS benefits. Respondent Gregg submitted an appeal regarding CalPERS' determination and the matter was heard by the Office of Administrative Hearings on December 7, 2018, and February 15, 2019. A Proposed Decision was issued on August 19, 2019, granting the appeal and finding that Respondent Gregg was an employee of Respondent City from July 2006 through June 2015, and was therefore entitled to service credit in CalPERS for those years.

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 August 19, 2019, concerning the appeal of James J. Gregg; 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 August 19, 2019, concerning the appeal of James J. Gregg, 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 August 19, 2019, concerning the appeal of James J. Gregg, 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 James J. Gregg, 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 James J. Gregg.

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
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Customer Services and Support