CalPERS

Board of Administration

Agenda Item 9a3

June 17, 2020

Item Name: Proposed Decision – In the Matter of the Appeal Regarding Public Employees' Pension Reform Act (PEPRA) Enrollment of BRIAN C. SPERBER, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Brian C. Sperber's (Respondent Sperber) 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 Sperber's employment with the California Department of Fair Employment and Housing commenced on January 7, 2013. Since Respondent Sperber's membership commenced after January 1, 2013, he is defined as a "new member" under the Public Employees' Pension Reform Act of 2013 (PEPRA). In 2018, CalPERS conducted an internal review and found that my|CalPERS failed to properly identify members hired between January 1, 2013 and June 30, 2013, as "new members" subject to PEPRA's retirement benefit formula. The my|CalPERS system inadvertently categorized members hired during this time as "classic" members. CalPERS determined that Respondent Sperber was an impacted member and notified him of CalPERS' error. CalPERS notified Respondent Sperber that, based on his membership date of January 7, 2013, he is considered a "new member" under PEPRA. CalPERS determined that it is required under Government Code section 20160 to correct the error in identifying Respondent Sperber's as a "classic" member; therefore, CalPERS determined that it was required to update Respondent Sperber's account to reflect the correct PEPRA retirement benefit enrollment formula (2% @ 62 Benefit Formula).

Respondent Sperber appealed this determination and the matter was heard by the Office of Administrative Hearings on December 9, 2019. A Proposed Decision was issued on March 25, 2020, affirming CalPERS' determination and denying Respondent Sperber's appeal.

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 March 25, 2020, concerning the appeal of Brian C. Sperber; 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 March 25, 2020, concerning the appeal of Brian C. Sperber, 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 March 25, 2020, concerning the appeal of Brian C. Sperber, 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 Brian C. Sperber, 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 Brian C. Sperber.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
Deputy Executive Officer
Customer Services and Support