



Board of Administration

# Agenda Item 9a16

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**November 17, 2021**

**Item Name:** Proposed Decision – In the Matter of the Appeal of Membership Determination and Post Retirement Employment of MARGARET M. SOUZA, Respondent, and CITY OF HUGHSON, Respondent.

**Program:** Employer Account Management Division

**Item Type:** Action

## **Parties' Positions**

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

Respondent Margaret M. Souza's (Respondent Souza) position is included in Attachment C, if any.

Respondent City of Hughson's (Respondent City) 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 Souza submitted an appeal resulting from CalPERS' determination that she was a common law employee of the City of Hughson from November 2011 through July 2015 and that her employment violated post-retirement employment rules. The matter was heard by the Office of Administrative Hearings on March 23, 2021 and June 4, 2021. A Proposed Decision was issued on September 17, 2021, affirming CalPERS' determination and denying the appeal.

## **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 September 17, 2021, concerning the appeal of Margaret M. Souza; 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 September 17, 2021, concerning the appeal of Margaret M. Souza, 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 September 17, 2021, concerning the appeal of Margaret M. Souza, 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 Margaret M. Souza, 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 Margaret M. Souza.

**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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Anthony Suine  
Deputy Executive Officer  
Customer Services and Support