



# Board of Administration Educational Day

## Action Item 14 – Proposed Decisions of Administrative Law Judges x. Jeffrey D. Crittenden and James Hall

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January 17, 2023

**Item Name:** Proposed Decision – In the Matter of the Appeal of Membership Determination of JEFFREY D. CRITTENDEN and JAMES HALL, Respondents, and CITY OF ONTARIO, Respondent.

**Program:** Employer Account Management Division

**Item Type:** Action

### Parties' Positions

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

Respondent Jeffrey D. Crittenden's (Respondent Crittenden) position is included in Attachment C, if any.

Respondent James Hall's (Respondent Hall) position is included in Attachment C, if any.

Respondent City of Ontario'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

CalPERS determined that Respondent Crittenden and Respondent Hall were not eligible for CalPERS membership as employees of Respondent City for the periods of July 2, 1990 through July 4, 1992 and August 5, 1991 through November 10, 1995, respectively, because their employment was excluded pursuant to Respondent City's "hourly exclusion" in its contract with CalPERS. Respondents Crittenden and Hall submitted appeals regarding CalPERS' determinations and the matter was heard by the Office of Administrative Hearings on August 1, 2022 and August 31, 2022. A Proposed Decision was issued on December 2, 2022 affirming CalPERS' determination and denying the appeals.

## Alternatives

- A. For use if the Board decides to modify and adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517 (c)(2)(C) which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the Proposed Decision, by correcting "Louis" to "Louie" and "Employees" to "Employees" on page 1; correcting "October 11, 2002" to "October 11, 2022" on page 2; correcting "February 23, 1992" to "August 5, 1991" in paragraph 5, on page 5; correcting "contractual conclusion" to "contractual exclusion" in paragraph 10, on page 6; adding a comma between "... hours a week" and "or requires service ..." in paragraph 14, on page 10; striking "emergency," after "on-call, emergency," in paragraph 14, on page 10; and correcting "section 20505" to "section 20305" in paragraph 15, on page 12 of the Proposed Decision; and replacing "CALPERS's" with "CalPERS" throughout the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated December 2, 2022, as modified, concerning the appeals of Jeffrey D. Crittenden and James Hall; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. 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 December 2, 2022, concerning the appeals of Jeffrey D. Crittenden and James Hall; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- C. 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 December 2, 2022, concerning the appeals of Jeffrey D. Crittenden and James Hall, 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.

- D. 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 December 2, 2022, concerning the appeals of Jeffrey D. Crittenden and James Hall, 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.

E. 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 Jeffrey D. Crittenden and James Hall, 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 Jeffrey D. Crittenden and James Hall.

**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