



Board of Administration

Action Item – Proposed Decisions of Administrative Law Judges Item c

July 14, 2021

Item Name: Revised Proposed Decision – In the Matter of the Appeal of Membership Determination of SCOTT A. MANN, Respondent, and CITY OF PALM SPRINGS, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Scott A. Mann's (Respondent Mann) 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 Scott A. Mann (Respondent Mann) was a common law employee of Respondent City of Palm Springs for the period of October 1, 2011 to April 22, 2014. Respondent City submitted an appeal regarding CalPERS' determination and the matter was heard by the Office of Administrative Hearings on January 26, 2021. A Revised Proposed Decision was issued on May 17, 2021, sustaining Respondent City's appeal, and affirming Respondent Mann's status as an independent contractor.

Alternatives

A. For use if the Board decides to modify and adopt the Revised 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 Revised Proposed Decision by amending page 25, paragraph 17, first sentence by changing the word "man" after the word "respondent" to "Mann" and amending page 29, paragraph 26, first sentence from "neither CalPERS nor respondent" to "neither

City of Palm Springs nor respondent” and hereby adopts as its own Decision the Proposed Decision dated May 17, 2021, as modified, concerning the appeal of Scott A. Mann; 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 Revised Proposed Decision dated May 17, 2021, concerning the appeal of Scott A. Mann; 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 Revised Proposed Decision dated May 17, 2021, concerning the appeal of Scott A. Mann, 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 Revised Proposed Decision dated May 17, 2021, concerning the appeal of Scott A. Mann, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

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 appeal of Scott A. Mann, 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 Scott A. Mann.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
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Customer Services and Support