



Board of Administration

Agenda Item b

July 13, 2022

Item Name: Proposed Decision – In the Matter of the Appeal Regarding Post Retirement Employment SALVADOR R. VELASQUEZ, Respondent, and HUMAN SERVICES CONSORTIUM OF THE EAST SAN GABRIEL VALLEY DBA LA WORKS, Respondent

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Salvador R. Velasquez's (Respondent) position is included in Attachment C, if any.

Respondent Human Services Consortium of the East San Gabriel Valley dba LA Works' (LA Works) 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

As a result of an audit CalPERS conducted of LA Works, CalPERS determined Respondent's post-retirement employment violated the California Public Employees' Retirement Law (PERL) because: (1) he worked 11.5 years as a retiree, (2) he received benefits in excess of base pay, and (3) he worked in excess of the allowable hours (960 hours per fiscal year). CalPERS also determined that Respondent's post-retirement employment payrate violated the PERL because it was greater than what was paid to employees performing comparable work, and that Respondent was required to reimburse CalPERS the retirement benefits he received during the period of unlawful employment. The matter was heard by the Office of Administrative Hearings on January 24-26, 2022. A Proposed Decision was issued on May 31, 2022, affirming CalPERS' determination and denying the appeal. The Proposed Decision requires Respondent to be reinstated for the period of January 1, 2003, to June 10, 2014, repay retirement benefits paid by CalPERS during that period of time, and pay an amount equal to the employee contributions that would have been paid during that period, plus interest.

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 May 31, 2022, concerning the appeal of Salvador R. Velasquez; 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 May 31, 2022, concerning the appeal of Salvador R. Velasquez, 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 May 31, 2022, concerning the appeal of Salvador R. Velasquez, 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 Salvador R. Velasquez, 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 Salvador R. Velasquez.

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