



Board of Administration

Agenda Item 8a5

March 19, 2025

Item Name: Proposed Decision – In the Matter of the Appeal of Membership Determination of MICHAEL G. COOK, Respondent, and CITY OF SAN BRUNO, Respondent.

Program: Brad Hanson Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Michael G. Cook's (Respondent) position is included in Attachment C, if any.

Respondent City of San Bruno'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 was hired by Respondent City as a Per-Diem Dispatcher from October 2018 to April 2020. Respondent City's contract with CalPERS specifically excludes "persons compensated on an hourly and/or per diem basis" from CalPERS membership. CalPERS determined that Respondent did not qualify for CalPERS membership from October 15, 2018, through April 18, 2020, because he was a per-diem employee. Respondent submitted an appeal regarding CalPERS' determination and the matter was heard by the Office of Administrative Hearings on August 14, 2024, and January 14, 2025. A Proposed Decision was issued on February 12, 2024, 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 February 12, 2025, concerning the appeal of Michael G. Cook; RESOLVED FURTHER that this Board Decision shall be effective 30 days following the 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 February 12, 2025, concerning the appeal of Michael G. Cook, 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 February 12, 2025, concerning the appeal of Michael G. Cook, 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 Michael G. Cook, 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 Michael G. Cook.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Kimberly A. Malm
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Customer Services and Support