CALSTRS

Appeals Committee

Item Number 4 – Open Session

Subject: Recommendation for Designation of Precedential Decision: In the Matter of the Retirement Benefits of: Patricia McLain

Presenter(s): Reina G. Minoya

Item Type: Action

Date & Time: March 6, 2024 – 15 minutes

Attachment(s): Attachment 1 – Notice of Decision and Order

PowerPoint(s): None

Item Purpose

The purpose of this item is to review and consider for designation as a Precedential Decision *In the Matter of the Retirement Benefits of: Patricia McLain*, as adopted by the Appeals Committee as its final decision on November 3, 2023. (Attachment 1)

Executive Summary

Pursuant to Government Code section 11425.60 and Section 7 of the Board Governance Manual on Designating Precedential Decisions, and upon recommendation by the CalSTRS Assistant General Counsel, the Appeals Committee may designate all or part of an administratively adjudicated decision it adopted as a Precedential Decision. The committee may designate a Precedential Decision when the following criteria are met: 1) the decision or part of the decision contains a significant legal or policy determination; 2) the decision or part of the decision reflects a rule of general application; and 3) the decision or part of the decision relates to a legal or policy issue that is likely to recur in the future. Once a decision or part of a decision has been designated as a Precedential Decision, it is binding in future administrative adjudications unless the Appeals Committee has rescinded the designation.

The Committee's adopted decision in *In the Matter of the Retirement Benefits of: Patricia McLain* is legally significant because it (1) holds that the definition of "creditable compensation" in Education Code section 22119.2 reflects the principles of consistent treatment of compensation in order to support the integrity of the retirement fund; (2) provides further interpretation and clarification of consistent treatment of compensation based on pay parity pursuant to Code of Regulations, title 5, section 27600; (3) reaffirms that the doctrine of equitable estoppel cannot be used to compel CalSTRS to pay incorrect benefits; (4) confirms that CalSTRS is entitled to rely on employer reporting such that the statute of limitations in Education Code section 22008 does not start until discovery of the employer reporting error; and (5) concludes that Assembly Bill 1667 relating to overpayment liability applies prospectively as of January 1, 2023.

The *McLain* decision contains significant legal and policy determinations, reflects rules of general application, and relates to legal and policy issues that are likely to recur in the future. As such, the CalSTRS Assistant General Counsel recommends that the Appeals Committee designates this decision as a Precedential Decision.

Background

Summary of the *McLain* Decision

Patricia McLain worked as a teacher and administrator. In July 2004, Ms. McLain became principal of Bel Air Elementary ("Bel Aire") in the Reed Union School District (the "District"). Her salary was approximately $139,119.15. In the 2013-14 school year, in addition to her position as principal at Bel Aire, Ms. McLain served as interim principal at Reed Elementary School ("Reed"). Her salary increased to $151,981.65. In the 2014-15 school year, the District implemented a new "Leadership Team Model" that consisted of a single lead administrator, a "Dual Principal," and three assistant principals for Bel Aire and Reed. Ms. McLain was appointed "Dual Principal," and her salary increased by approximately 20 percent to $182,239.05. She held this position for the 2014-15 school year.

The District discontinued the Leadership Team Model in the 2015-16 school year, and Ms. McLain later signed a contract to return to only working as principal of Bel Aire. However, because the District did not timely notify Ms. McLain that she would no longer serve as Dual Principal in the 2015-16 school year as required by Education Code section 44951, Ms. McLain continued to receive the higher compensation for the Dual Principal position in the amount of $191,566.60, despite serving as only principal of Bel Aire. No one held the Dual Principal position after Ms. McLain.

Ms. McLain retired on July 1, 2016, with 35.623 years of service credit. Her final compensation was based on her highest one-year salary from the 2015-16 school year when she worked as principal of Bel Aire but earned the Dual Principal salary as a result of the District's untimely notification of her being released from the Dual Principal position. Ms. McLain began receiving her retirement benefits in August of 2016. After conducting a review of Ms. McLain's compensation, CalSTRS found that the pay increases she received in the 2013-14 through 2015-16 school years were in excess of her full-time position, and therefore creditable to her Defined Benefit Supplement account, not her Defined Benefit account. Furthermore, CalSTRS found that Ms. McLain's pay increases for the three school years were inconsistent and therefore not creditable under Education Code section 22119.2.

The decision as adopted by the Appeal Committee found that Ms. McLain's pay increases were inconsistent under California Code of Regulations, title 5, section 27600, subdivisions (a)(4) and (a)(5), and found the precedential decision of *In the Matter of the Statement of Issues Against: Barbara Pahre* to be persuasive. The decision provided deference to CalSTRS's interpretation that California Code of Regulations, title 5, section 27600, subdivision (a)(7) requires contemporaneous evidence to establish pay parity, and found that the evidence presented by Ms. McLain was insufficient to demonstrate that her compensation was increased to establish pay parity. The decision also found that the statute of limitation, laches, and equitable estoppel defenses raised by Ms. McLain were inapplicable. Lastly, the decision found that Assembly Bill 1667 ("AB 1667") was irrelevant to the case, as it became effective January 1, 2023, and operates only prospectively. Thus, the decision denied Ms. McLain's appeal to credit her compensation for the 2014-2015 and 2015-2016 school years to her DB account.

Discussion

The *McLain* decision contains several significant legal and policy determinations that are likely to recur in the future.

1. **Education Code section 22119.2 sets forth the principles of consistency for compensation paid to members to ensure the integrity of the retirement fund.**

The decision emphasizes and reinforces the principles of consistency that support the integrity of the Teachers' Retirement Fund. Specifically, the decision references Education Code section 22119.2, subdivision (g) which states that the definition of creditable compensation "reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, consistent treatment of compensation for the position, preventing adverse selection, and excluding from compensation earnable remuneration that is paid to enhance a member's benefits."

2. **California Code of Regulations, title 5, section 27600 provides the criteria for assessing the consistent treatment of compensation paid by an employer to their employee (pay parity).**

Pahre, which was heard and submitted for decision to the Committee in 2014 and designated as precedential in 2018, discusses the principles of consistency, but only under Education Code section 22119.2, because the consistency criteria set forth in Section 27600 was not operative until January 1, 2015. The *McLain* decision provides more recent law and analysis regarding Section 27600 dictating the consistent treatment of compensation. The decision also interprets Section 27600, subdivision (a)(7) to require contemporaneous evidence of the employer's reason for the pay increase, and that pay parity exists only after the employer identifies an existing disparity between two groups of employees who receive disparate pay for similar duties.

3. **Equitable estoppel cannot be invoked, even if the elements are met, when doing so would contravene a statutory limitation and provide for an authorized benefit.**

The McClain decision reaffirms that the doctrine of equitable estoppel "cannot be used to compel CalSTRS to pay incorrect benefits," and that any argument that CalSTRS knew or should have known the facts surrounding the pay increases that Ms. McLain received failed.

4. **CalSTRS is not barred from recovery under Education Code section 22008.**

Education Code section 22008 sets forth a three-year period of limitations. Section 22308, subdivision (c) provides that if an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member to receive benefits under the Defined Benefit program or Defined Benefit Supplement program, the period of limitations shall commence with the discovery of the incorrect payment. CalSTRS is entitled to rely on the employer reporting it receives. Thus, the limitations period runs from the discovery of the employer reporting error.

The *McLain* decision concluded that CalSTRS was not "time-barred from seeking to reverse the incorrectly reported payments" because "CalSTRS was entitled to rely upon the District's reporting of compensation when it was made and at the time of [Ms. McLain's] retirement." Furthermore, the decision found that "CalSTRS was not put on notice of incorrect reporting by [Ms. McLain's] pre-retirement meeting with a benefits counselor."

5. **AB 1667 applies prospectively, not retroactively.**

AB 1667provides that, among other things, an employer, and not a member, is responsible for repaying any overpayments that are caused by an employer reporting error. The *McLain* decision is the first to clarify that AB 1667 became effective January 1, 2023, and operates only prospectively.

Recommendation

This decision is recommended to be designated as precedential because each of the above legal determinations is significant to CalSTRS, as it encounters various reporting issues involving the compensation consistency principles under Education Code section 22119.2 and California Code of Regulations, title 5, section 27600; equitable estoppel and statute of limitation defenses under Education Code section 22008; and claims of the retroactive application of AB 1667. Designating this matter as precedential will help CalSTRS, its members, and employers navigate these issues while decreasing the uncertainty in reporting and the number of appeals, all while promoting continuity and consistency of decisions.

These legal issues are likely to recur in the future, as many appeals dispute findings of non-creditable compensation, allege equitable estoppel as an affirmative defense, allege the statute of limitations as an affirmative defense, and demand a retroactive application of AB 1667. According to the Compensation Review Unit, it has encountered 39 cases with facts and law similar to *McLain* between 2012 and 2023.

Accordingly, the Assistant General Counsel recommends that the Appeals Committee designates *In the Matter of the Retirement Benefits of: Patricia McLain*, as adopted by the Appeals Committee as its final decision on November 3, 2023, as a Precedential Decision because it contains significant legal and policy determinations, reflects rules of general application, and relates to legal and policy issues that are likely to recur in the future.

Once a decision has been designated as a Precedential Decision, it is binding in future administrative adjudications unless the Appeals Committee rescinds the designation. The Precedential Decision shall be added to an index containing all of CalSTRS' Precedential Decisions and will be publicized annually in the California Regulatory Notice Registry.

Strategic Plan Linkage: Goal 1 (trusted stewards) to ensure a well-governed, financially sound trust fund

Board Policy Linkage: Section 7.D. Designating Precedential Decisions

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