



BOARD OF RETIREMENT

Staff Report

File #: 19-1020

Agenda Date: 8/6/2020

Agenda #: 10.

FROM: Colin Bishop, Chief of Member Services

SUBJECT: Returning Retiree Certification: Charles Abney

RECOMMENDATION:

Approve the request to extend re-employment of Charles Abney as fixed-wing aircraft pilot for the San Bernardino County Sheriff's Department, from September 1, 2020 to October 31, 2021, because an extreme necessity exists to continue the retiree's employment beyond the 18-month limit, and thus the standards of SBCERA Board Benefits Policy No. 032: "Retirees Returning to Work," have been met.

BACKGROUND:

Mr. Abney retired on June 30, 2005 as a Helicopter Pilot from the County of San Bernardino Sheriff's Department and has been re-employed since July 16, 2011 in the Sheriff's Aviation Unit. His initial reemployment was prior to the implementation of the California Public Employees' Pension Reform Act of 2013 (PEPRA), when additional restrictions were placed on retirees returning to work. In January 2015, SBCERA's Board approved version 1.0 of Administration Policy No. 015, "Retirees Returning to Work," which outlined a process whereby employers would report and certify the eligibility of retired SBCERA members prior to reemployment. At the time, the policy permitted reemployment for a "limited duration" of time if the duration of employment was less than two years. For extensions beyond that two-year cutoff, Board approval was not required, and instead, staff would review and process the extension.

Accordingly, in February 2016, the Sheriff's Department filed for and was granted an extension by SBCERA staff for Mr. Abney to continue working through August 31, 2019. In August 2019, the Sheriff's Department filed for another extension, and the SBCERA Board granted Mr. Abney this extension to continue working through August 31, 2020.

The employer contends that Mr. Abney's skill and experience with aircraft is critical to the Sheriff's Department and the public's safety. The Sheriff's Department utilizes fixed-wing aircraft to provide reconnaissance and critical downlink communications to ground and command staff for a variety of incidents affecting public safety, including natural disasters, search and rescue, and other critical incidents. The employer reports that these aircraft played a vital role in response to the recent civil protests in San Bernardino County, and has included other information in its memo, attached as Exhibit B. (While the employer mentions the COVID-19 pandemic in its memo, it appears that Mr. Abney's reemployment is not directly related to preventing an emergency stoppage of public business in response to the pandemic, so Mr. Abney would not be eligible to return under the "Authorization for the Emergency Appointment of Retired SBCERA Member," which SBCERA instituted after Governor Gavin Newsom's statewide state of emergency. That authorization does not

require SBCERA Board approval.)

That memo also includes information regarding the Sheriff's recruitment efforts for this position. For the past year, the two full-time pilot positions have been vacant in the Sheriff's Department. Only recently have they been successful in recruiting one pilot who has completed the in-depth background process and is expected to begin work soon. Training this pilot in the Sheriff's Department aircraft and procedures will take approximately 12 months. The department contends it is imperative to extend Mr. Abney's employment and ensure the department continues to meet its public safety obligations, pending the completion of training of the recently recruited pilot, and the potential recruitment and hiring of another pilot. The extension would expire October 31, 2021.

The Sheriff's Department contends there is an extreme necessity to continue the retiree's employment beyond the 18-month limit.

Pursuant to Government Code section 7522.56, 317680.6, and 31680.7 and SBCERA Benefits Policy No. 032, upon receiving and reviewing the participating employer and retiree's justification to extend the retiree's employment beyond the 18-month limit for presumed compliance with the statutory "limited duration" standard, the Board must, based on the facts and evidence presented:

1. Find one of the following:

- a. That extreme necessity exists to continue the retiree's employment beyond the 18-month limit; or
- b. In the alternative, that the extension of employment is unavoidable and circumstances exist that could not have been anticipated; or
- c. That there is neither an extreme necessity, nor circumstances that are unavoidable or could not have been anticipated, and thus that the standards of Policy No. 032 are not met.

2. Based on the finding above in part (1) above, the Board:

- a. Approves the request for extension of employment of retiree beyond the 18 month limit. Extension of the employment commences on the date indicated on this certification and will terminate on October 31, 2021; or
- b. Denies the request of extension of employment of retiree beyond the 18-month limit. In a case of any violation of the law as implemented through Policy No. 032, including continued employment beyond the 18-month limit or without prior approval, the Board directs staff to suspend the retiree's retirement benefit and reinstate the retiree to active service. Additionally, staff is directed to commence collection of any retirement benefits received during any unlawful re-employment, as well as contributions from employer and employee.

As noted above, staff recommends that the Board approve this request for the extension of employment of Mr. Abney.

BUDGET IMPACT:

None.

STRATEGIC PLANNING GOAL/OBJECTIVE:

Operational Excellence & Efficiency

STAFF CONTACT:

Colin Bishop

ATTACHMENTS:

Exhibit A: Board Summary Worksheet

Exhibit B: Certification Forms and Attachments