

March 14, 2024

Honorable Chief Justice Patricia Guerrero
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Ventura County Retirees and VCERA Members Letter in Support of Petition of Criminal Justice Attorneys Association of Ventura County for Review of Court of Appeal's Published Opinion in *Ventura County Employees' Retirement Association vs. Criminal Justice Attorney's Association of Ventura County et al.*, Supreme Court Case No. S283978

To the Honorable Patricia Guerrero, Chief Justice, and the Honorable Associate Justices, of the California Supreme Court:

We write to support and ask your Court to grant the petition submitted on February 27, 2024, by the Criminal Justice Attorneys Association of Ventura County, et al., in the above-entitled action. (Cal. Rules of Court, rule 8.500(g).)

The undersigned are current members of the Ventura County Employees' Retirement Association (VCERA) as retirees from employment with the County of Ventura. Each of us receives retirement benefits from VCERA, one of the twenty 1937 Act retirement systems operating under the requirements of California's Constitution and statutes. Each listed signatory has provided consent, in writing, to inclusion as a signatory to this letter.

The signatories' interest in supporting the petition for review is to eliminate the adverse impact of actions VCERA has proposed and is implementing based on the Court of Appeal's opinion. Our goal is to have your Court settle the important question of law raised by petitioners and to have uniformity of decisions across 1937 Act public entities. Specifically, we ask your Court to review this matter to determine whether the Court of Appeal's interpretation of the law at issue is consistent with the actual provisions of law as written.

In particular, the undersigned have suffered (or will soon suffer) significant financial harm from the lower courts' interpretation of provisions in Government Code section 31461 based on the Court of Appeal's and VCERA's misconstruing your Court's opinion in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Assn.* (2020) 9 Cal.5th 1032 ("*Alameda*").

As stated in the petition for review, the Court of Appeal’s misinterpretation of your Court’s *Alameda* decision effectively alters the Legislature’s use of the words “each 12-month period” (as found in Government Code section 31461, subdivisions (b)(2) and (b)(4)) to mean only a given “calendar year,” rather than any given 12-month period. While this might seem minor, it changes the result of the final benefit calculation. Retirees for more than a decade based their retirement dates on VCERA’s own calculations of pension benefits, which were based on any given 12-month period, not any given calendar year. In fact, there is no mention in section 31461 of calendar year. Even if an employee selects no final compensation year, or years, by law the final compensation period is the 12 months preceding retirement, often not a calendar year.

Retirees who planned their retirements based on the rules outlined for them had no opportunity to plan, no opportunity to change their retirement dates (or to work longer or take new employment), and the majority have had no COLAs since their retirement dates. All of them will be irreparably damaged by the Court of Appeal’s clear misinterpretation of “12-month period.” Moreover, there is no need for such a conservative interpretation, since the County of Ventura has historically been careful to design its leave buydown to avoid violating any requirements of section 31461, as modified by the Legislature’s adoption of PEPPRA. We believe this serious harm is not necessary, nor required by law.

Our concern about this matter grew out of VCERA’s lack of notice prior to its actions, including its planned elimination of certain *previously approved* annual leave buydowns from retirees’ final compensation, including a retroactive application to January 1, 2013. We were unaware of its filing the declaratory relief action at issue in this case, which case named only one retired VCERA member (Leroy Smith); all of VCERA’s actions were taken without prior notice to the other retirees most likely to be impacted by its actions.

VCERA also took these actions in the absence of a careful review of *Alameda*’s actual meaning, with no adopted process to review *Alameda* and related law to determine what actions actually were required. We have seen no analysis of the impact on the specific retirement benefit calculation practices at issue here. Your Court’s decision in *Alameda* clearly calls for just such analysis. Thus, in Footnote 13 of *Alameda*, your Court stated:

“The PEPPRA Amendment does not require exclusion solely because an item of compensation fits within one of these examples...Before it is excluded, an item of compensation described . . . by subdivision (b)(1)(A) through (C) must be found

by the county retirement board to have been ‘paid to enhance a member’s retirement benefit.’”

In that same Footnote, your Court’s *Alameda* decision also “requires each board to ‘establish a procedure for ... determining whether an item of compensation was paid to enhance a member’s retirement benefit.’” (*Id.*) The VCERA Board undertook no such analysis.

While Footnote 13 deals with section 31461, subdivision (b)(1), and “three examples of the types of compensation that could raise an inference of improper payment,” (*Id.*) the language in section 31461(b)(2), immediately following, is identical, focusing on avoidance of spiking pension through improper inclusion of compensation not “earned and payable in each 12 month-period during the final average salary period.” It seems, then, by inference, that the same requirements would apply; that is, that compensation items “must be found by the county retirement board to have been ‘paid to enhance a member’s retirement benefit...through a procedure...’” (*Id.*)

Again, Ventura County’s annual leave buydown program was carefully designed to preclude “spiking” of pensions. Labor agreements included a limit on the hours sold each year, and a further limit on the hours that could be included in final compensation in any given 12-month period. In fact, again, the number of annual leave hours included in final compensation within the County’s program was designed to be fewer than an employee could earn in a 12-month period, whether or not that final 12 months (or final 36 months) took place in two (or more than three) calendar years.

By these restrictions, going beyond the requirements of PEPRA, Ventura County ensured that fewer hours than those earned in any year would contribute to the calculation of retirement benefits. VCERA, instead, argues that even fewer hours should be included in final compensation, since that is the amount which can be cashed out in any calendar year.

In short, we do not believe that the County’s annual leave buydown program has violated the requirements of PEPRA since the County of Ventura’s actions to undertake significant review and discussion in order to amend labor agreements in 2014 to conform to its new requirements. Based on the structure of this buydown program we do not believe that pay from this item requires exclusion from final compensation because of your Court’s *Alameda* decision.

Your Court, in *Alameda*, commented on “an additional function” of section 3146, noting that “even in counties that limited the amount of leave time that could be cashed out in a year, employees were able to double the amount of cashed out leave time received during a final compensation year by designating a final compensation year that straddles two calendar years...By limiting cashed out leave time to that ‘earned and payable’ in a ‘12-month period,’ subdivision (b)(2) and (4) prevent this practice.” (Page 21) (Underscore added.) Ventura County, then, had double protections: it followed the requirements of “earned and payable in any 12-month or 36-month period,” and it further limited the number of hours included in final compensation to less than could be earned in a year.

The Court of Appeal interpreted this language otherwise, saying that the 12-month (or 36-month) period in section 31461 is intended to be a calendar year (or three calendar years). This is not what PEPRAs says in section 31461, subdivision (b)(2) and (b)(4). It is also a puzzle to implement. If an employee retires on June 30 of any year, VCERA argues that the final compensation year is the previous calendar year. If that employee received a normal COLA, or merit pay increase, on January 1 of the retirement year, for example, their final compensation will not include that legitimate, increased pay. Depending on when it occurred, the value of the vacation buydown would also be calculated at the lesser pay. This is clearly not what the Legislature intended. The point in PEPRAs was not to artificially reduce pensions, but rather to avoid artificially increasing or “spiking” pensions.

For these reasons, we respectfully ask that your Court clarify that the Legislature’s intent, and your Court’s intent in *Alameda*, was to follow, and not to alter, the requirements of section 31461, subdivisions (b)(2) and (b)(4).

In closing, the treatment of funds collected from 1937 Act county employees, and held by their respective retirement systems, *for the express purpose of funding their pensions*, is of paramount concern. VCERA’s planned severe reductions to these retirees’ benefits, taken from them well after their retirements have already occurred (up to a decade or more after in this case), without notice and thorough public review, is a profoundly serious matter. The fact that it is to be done without refunds of contributions made by these retirees during all those years, funds held by VCERA in trust for them, is unthinkable.

We urge your Court to grant this petition.

Thank you.

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