

Bond Case Briefs

Municipal Finance Law Since 1971

PENSIONS - CALIFORNIA

Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Assn.

Court of Appeal, First District, Division 4, California - January 8, 2018 - 19 Cal.App.5th 61 - 227 Cal.Rptr.3d 787 - 18 Cal. Daily Op. Serv. 335 - 2018 Daily Journal D.A.R. 309

In consolidated cases, public employees and public employee organizations brought mandamus actions challenging constitutionality of Public Employee Pension Reform Act (PEPRA) as it applied to certain plan members under County Employees Retirement Law of 1937 (CERL).

The Superior Court denied relief in part and issued writs of mandate. Employees and organizations appealed and State and county sanitary district filed appeals and cross-appeals.

The Court of Appeal held that:

- Under CERL, an item is either includable in compensation, compensation earnable, and final compensation, or it is not, and if item fails to satisfy any one of the statutory litmus tests, it may not be included in a member's pensionable compensation;
- Under CERL, it is the employee's election to turn an otherwise in-kind benefit into cash, either through a leave cash-out or by choosing to receive vacation pay without working, that creates the remuneration paid in cash that is pensionable compensation;
- PEPRA amendment to CERL, expressly excluding terminal pay from compensation earnable, does not amount to a change in existing CERL law and continues to require that compensation must be payable during the final compensation period to be included in compensation earnable;
- PEPRA removed CERL's inclusion of on-call premium pay in compensation earnable, requiring vested rights analysis;
- PEPRA's exclusion of any compensation paid to enhance a member's retirement benefit, in determining compensation earnable, was a change to pre-PEPRA CERL law, requiring vested rights analysis; and
- Balance of equities supported application of estoppel to require CERL boards to continue to treat terminal pay as compensation earnable.