



BOARD OF RETIREMENT

Staff Report

File #: 19-1033

Agenda Date: 8/6/2020

Agenda #: 14.

FROM: Debby Cherney, Chief Executive Officer

SUBJECT: Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association - California Supreme Court Decision Summary

RECOMMENDATION:

Update re California Supreme Court Decision *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* ("Alameda") and recommend the Board adopt Amendment to the Pay Code Resolution to implement Government Code section 31461 subdivision (b), effective as to SBCERA members who retired on and after January 1, 2013, pursuant to *Alameda*.

BACKGROUND:

Ashley Dunning from the Nossaman firm will provide the Board with a summary oral report on the July 30, 2020 California Supreme Court decision in this closely-watched and important case.

The SBCERA Board of Retirement is required by Government Code sections 31461, 31542, 7522.10, and 7522.34, as well as Board Benefits Policy No. 026, *Compensation Earnable and Pensionable Compensation*, to determine what items of member compensation are included in employee compensation upon which appropriate contribution rates should be applied and upon which retirement benefits are calculated.

Effective January 1, 2013, the Legislature adopted amendments to Government Code section 31461's definition of *compensation earnable* in Assembly Bill 340 and Assembly 197 (collectively ("AB 197")) and the implementation of AB 197 by four other retirement systems governed by County Employees' Retirement Law of 1937 (CERL) had been challenged in court as a violation of members' constitutional rights, resulting in two cases before the California Supreme Court, one of which was decided on July 30, 2020- *Alameda County Deputy Sheriff's Assoc. v. Alameda County Employees' Retirement Association, Cal. Supreme Court Case No. S247095*. ("Alameda")

Pending the resolution of the *Alameda* case, in March 2019, SBCERA adopted in its "AB 197 Clean-Up Resolution" addressing certain types of pay that were in controversy in *Alameda*, specifically on call, call back, and stand by pay, as well as employer paid premiums. However, as part of this Resolution, in light of legal uncertainty regarding authority of the SBCERA Board to exclude the pay items in controversy and the likelihood that *Alameda* would resolve that uncertainty, SBCERA Board deferred any action on disallowing the excluded pay items. As a result, staff included a footnote on the individual pay items that were in controversy in *Alameda*, which stated:

Determination of item as Compensation earnable is subject to future Board action.
Inclusion subject to judicial resolution of [*Alameda*].

On July 30, 2020, the California Supreme Court filed its decision in *Alameda*. The *Alameda* decision overturns certain legal and equitable determinations made in the lower court of appeal decision, and concludes that all amendments to the definition of compensation earnable in Government Code section 31461, enacted as a result of the Public Employees' Pension Reform Act of 2013 ("PEPRA") and related statutory changes to CERL, effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The *Alameda* decision further determines that CERL retirement boards may not include items in compensation earnable that section 31461 requires them to exclude.

Consequently, the staff recommends the SBCERA Board adopt the attached [Proposed] Resolution Regarding the Implementation of the *Alameda* Decision to Compensation Earnable. The Resolution requires SBCERA to comply with *Alameda's* directives regarding mandatorily excluded pay items, specifically those pay item which fall within the provisions of Government Code section 31461 subdivision (b), sections (1), (2), (3) and (4). The submitted Resolution supersedes any previous Resolutions for employer pay codes for employee compensation, specifically the provisions that allowed the confirmed disallowed pay items under Government Code section 31461.

Staff is aware that the topic of whether any additional refund of contributions to active members for periods between January 1, 2013 to July 31, 2020, will likely continue to be litigated on remand of the *Alameda* Decision to the trial court. Staff will monitor those developments and will bring any further recommendations back to the SBCERA Board on that topic should additional contribution adjustments appear to be warranted.

BUDGET IMPACT:

None.

STRATEGIC PLANNING GOAL/OBJECTIVE:

Effective Communications

STAFF CONTACT:

Debby Cherney
Barbara Hannah

ATTACHMENTS:

Exhibit A: Nossaman Summary of Alameda Opinion
Exhibit B: [Proposed] SBCERA Resolution re Implementation of Alameda Decision - Redline
Exhibit C: [Proposed] SBCERA Resolution re Implementation of Alameda Decision - Clean
Exhibit D: Nossaman Presentation