

ATTACHMENT A

THE PROPOSED DECISION

**BEFORE THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Public Employees' Pension
Reform Act Enrollment of:**

BENJAMIN M. ELIZONDO,

Respondent

and

CITY OF GARDEN GROVE,

Respondent

Case No. 2024-0417

OAH No. 2025030861

**In the Matter of the Appeal of Public Employees' Pension
Reform Act Enrollment of:**

RAPHAEL M. LEE,

Respondent

and

CITY OF GARDEN GROVE,

Respondent

Case No. 2024-0489

OAH No. 2025030855

PROPOSED DECISION

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter via videoconference on August 20–21, 2025.

Austa Wakily, Senior Attorney, represented California Public Employees' Retirement System (CalPERS).

Jacob A. Kalinski, Esq., Rains Lucia Stern St. Phalle & Silver, PC, represented respondents Benjamin M. Elizondo and Raphael M. Lee, who were present throughout the hearing.

There was no appearance on behalf of respondent City of Garden Grove (City). Therefore, the matter proceeded as a default against respondent City of Garden Grove only under Government Code section 11520, subdivision (a).

Oral and documentary evidence was received. At the close of the hearing, the ALJ ordered the parties to submit closing briefs by September 12, 2025. On September 10, 2025, the parties submitted a letter jointly requesting an extension of the closing brief due date. The same day, the ALJ granted the parties' request and extended the

deadline for the parties to submit closing briefs to September 19, 2025. CalPERS and respondents timely submitted closing briefs. The briefs were marked and admitted into evidence as Exhibit 32 and Exhibit X, respectively. The record was closed, and the matter was submitted for decision on September 19, 2025.

SUMMARY

Respondents assert they should be enrolled as “classic members,” rather than “new members” of CalPERS, and therefore should receive more favorable retirement benefits. As CalPERS did not improperly enroll respondents as “new members,” respondents’ appeal is denied.

FACTUAL FINDINGS

Background

1. CalPERS is a defined benefit plan administered under the California Public Employees’ Retirement Law (PERL). (Gov. Code, § 20000 et seq.) (All undesignated statutory references are to the Government Code.) Respondent Elizondo and respondent Lee (collectively, respondents) both work as police officers for the City. The City is a public agency that contracts with CalPERS to provide retirement benefits for its eligible employees. By virtue of its contract with CalPERS, the City agreed to be bound by the terms of the PERL and to make its employees members of CalPERS subject to the PERL.

2. On September 12, 2012, the Legislature enacted the Public Employees’ Pension Reform Act (PEPRA), which became effective January 1, 2013. “The centerpiece

of PEPRA was a pension plan applicable only to newly hired public employees that is less expansive, and therefore less burdensome for the state and local governments, than the plans covering then-existing public employees." (*Cal Fire Local 2881 v. CalPERS* (2019) 6 Cal.5th 965, 974–975.) The changes made by PEPRA made retirement benefits for new employees "less favorable than the equivalent benefits typically available to then-existing public employees." (*Id.* at p. 975) Employees who were members before PEPRA went into effect are known as "classic members," while employees who are subject to PEPRA are known as "new members." (See § 7522.04, subd. (e), (f); Cal. Code Regs., tit. 2 (CCR), § 579.1.)

Procedural History

3. By letters dated January 27 and January 30, 2023, CalPERS informed the City that it had made preliminary determinations that respondents did not qualify for CalPERS membership before February 15, 2013, and requested additional records to determine their correct date of membership. (Exs. 30–31.)

4. By letter dated May 2, 2023, respondents' counsel appealed CalPERS' preliminary determination, asserting that respondents were hired as of October 2, 2012, and therefore should be considered classic members rather than new members subject to PEPRA. (Ex. 7.) By separate letters dated February 6, 2024, CalPERS notified respondents of its final determination that they were subject to PEPRA (CalPERS styled these letters as a "Confirmation of Appeal Withdrawal," but respondents did not withdraw their appeal after receiving this letter). (Exs. 5–6.)

5. On March 3, 2025, CalPERS issued a Statement of Issues (SOI) regarding respondent Lee's appeal. (Ex 3.) On March 17, 2025, CalPERS issued a SOI regarding

respondent Elizondo's appeal. By order dated August 8, 2025, OAH consolidated both matters for hearing.

6. As stated in the SOIs, the issues in this appeal are:

- (1) Whether the City incorrectly enrolled respondents into CalPERS membership on February 15, 2013.
- (2) If City incorrectly enrolled respondents into CalPERS membership on February 15, 2013, whether the City is required to correct the enrollment date pursuant to Government Code section 20160.
- (3) Whether respondents should be enrolled as "new members" under PEPRA.

(Ex. 1, p. A11; Ex. 3, p. A50.)

Respondents' Work for the City and Enrollment in CalPERS

7. Respondents Elizondo and Lee began working for the City as police cadets in 2010 and 2011, respectively. At the time respondents worked as police cadets, the position was part-time. Cadets could not work more than 1,000 hours in a fiscal year, had to be full-time college students, and typically worked 18 hours per week.

8. While working as cadets in 2012, respondents heard from colleagues about impending changes to California pension law contained in PEPRA and understood that they would need to be hired before January 1, 2013, to receive more favorable pension treatment as "classic members." Upon hearing this news,

respondents took steps to obtain employment elsewhere because the City was not hiring new police officers at the time. This changed in September 2012, when Art Tintel, a recruiter for the City's police department, offered respondents full-time positions as police recruits. The City's offer letter stated that respondents' "tentative start date is the first day of Pre-Academy, Tuesday, October 2, 2012" and that "[t]he Academy begins on October 15, 2012." (Exs. 19–20.) The offer letter did not state whether a police recruit is a full-time position or the duration respondents would be expected to be police recruits. The City's job recruitment posting for the police recruit position at the time also mentioned that a police recruit's hiring as a sworn peace officer was conditional on several factors, including academy performance, evaluations, referrals, and the availability of positions. (Ex. R.) Respondents accepted the City's offer to become police recruits. (Exs. 19–20.)

9. In preparation for their "pre-academy" training, respondents received materials such as a duty belt and uniform, and were expected to take a "training academy preparation" class. (See Exs. T–U.) Respondents' pre-academy training began with Tintel as scheduled on October 2, 2012. (Ex. P, p. C81; Ex. Q, p. C99.) Respondents participated in formal police academy training—provided by the Orange County Sheriff's Department—from October 15, 2012, through April 9, 2013. At some point while respondents were enrolled in the police academy, Tintel told all the City's police recruits, including respondents, that their enrollment in CalPERS would be based not on their hire date, but on the date they became sworn peace officers. This meant that respondents would not be eligible to receive the more favorable retirement benefits as "classic members." Respondents believed what Tintel told them and were disappointed at learning this news, as this was not what Tintel had told them upon their hiring.

//

10. On February 15, 2013, the City enrolled respondents as CalPERS members, asserting that each had worked 1,000 hours as a full-time employee as of that date. (Ex. 25.) But a review of respondents' time sheets while working as police recruits shows that—consistent with CalPERS's calculations in respondents' preliminary determination letters—respondents had not worked 1,000 hours in the police recruit position as of February 15, 2013. (Exs. 29–30, P–Q.) Instead, it appears as though the City may have incorrectly counted the time respondents worked as police cadets in making this calculation, even though the police cadet position is excluded from CalPERS membership as noted below.

11. The City hired respondents as sworn police officers on April 10, 2013, the day after they completed the police academy.

Respondents' Enrollment Dispute

12. By letter to the City dated June 7, 2022, respondents' counsel claimed the City improperly failed to enroll respondents as CalPERS members until February 2013, when they should have been enrolled upon their hire as police recruits in October 2012. (Ex. F.) The letter further asserts that, because the City failed to timely enroll respondents as CalPERS members in 2012, they have been mischaracterized as new members rather than classic members. The City responded by letter dated August 19, 2022, stating it had contacted CalPERS to submit an official inquiry on the matter and had submitted documents to CalPERS about respondents' hiring and employment with the City. (Ex. 18; Ex. G.)

13. CalPERS sent letters to the City requesting information about respondents' hiring and employment with the City in August 2022, October 2022, and January 2023. (Exs. 11–13, 15–17.) Included in the City's responses to these requests

were various human resources forms relating to respondents' hiring as police recruits and police officers. Human resources forms relating to respondents' appointment as police recruits state their hiring into that position was a "temporary appointment." (Exs. 21–22.) Employee promotion checklists in respondents' personnel files also stated that this appointment was a part-time, rather than a full-time position. (Exs. 23–24.) Janna Bradley, a Benefits Supervisor for the City, testified that it was her understanding that the City's human resources office characterized the police recruit position as "part time," in a shorthand manner to show that the appointment was temporary. Despite the position's characterization as "part time," Bradley acknowledged that police recruits are expected to work more than 30 hours per week and thus are "full time" employees even though their appointment is considered temporary. According to Bradley, the City considers a police recruit's employment to be temporary because a person "cannot make a career" out of being a police recruit, given the inherently temporary nature of the appointment while the employee is in the police academy.

14. Other evidence adduced by respondents, including Bradley's testimony on cross-examination, suggests the City's enrollment practices for police recruits into CalPERS have been inconsistent over time. For example, unlike respondents, other police recruits may have been enrolled as CalPERS members immediately upon becoming a recruit rather than waiting for 1,000 hours of full-time employment. (See Ex. K.)

The City's Contract with CalPERS

15. The City's contract with CalPERS provides, in relevant part:

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes

of employees shall not become members of said Retirement System

a. CROSSING GUARDS;

b. POLICE CADETS; AND

c. EMPLOYEES HIRED UNDER THE EMERGENCY EMPLOYMENT ACT OF 1971 (PEPEMPLOYEES) *[sic]*[.]

LEGAL CONCLUSIONS

Applicable Law

1. Under the PERL, an "employee" is defined to include "[a]ny person in the employ of any contracting agency." (§ 20028, subd. (b).) The CalPERS Board of Administration "shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system." (§ 20125.)

2. A retirement contract between CalPERS and a contracting agency shall provide CalPERS benefits to all employees of the contracting agency, subject to exclusions not relevant here. (§ 20502, subd. (a)(1).) Additionally, subject to exceptions not relevant here, the contracting agency and its employees shall also be subject to all provisions of the PERL. (§ 20506.)

3. Section 20281 generally provides that all employees become members of CalPERS upon his or her entry into employment. That said, section 20280 excludes several employment roles and classifications from this automatic membership,

including those discussed in Article 2 (commencing with Section 20300). Section 20305 is within Article 2 and provides, in relevant part:

- (a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless:
 - (1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract.
 - (2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325.
 - (3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions:
 - (A) The appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time employment continues for longer than six months, in which case membership shall be effective not later than the first day of the first pay period of the seventh month of employment.

(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed. For purposes of this subdivision, "day" means each eight-hour period of employment worked by an employee paid on a per diem basis so that membership is effective after he or she has completed 1,000 hours of compensated service in a fiscal year. [¶] . . . [¶]

4. Section 7522.04 defines a "new member," as follows:
 - (1) An individual who becomes a member of any public retirement system for the first time on or after January 1, 2013, and who was not a member of any other public retirement system prior to that date.
 - (2) An individual who becomes a member of a public retirement system for the first time on or after January 1, 2013, and who was a member of another public retirement system prior to that date, but who was not subject to reciprocity under subdivision (c) of Section 7522.02.
 - (3) An individual who was an active member in a retirement system and who, after a break in service of more than six months, returned to active membership in that system with

a new employer. For purposes of this subdivision, a change in employment between state entities or from one school employer to another shall not be considered as service with a new employer.

(§ 7522.04, subd. (f).)

5. CCR section 579.1, defines "new members" and "classic members" as follows:

(a) For purposes of this article, "new members" are those individuals defined in Government Code section 7522.04(f).

All sections in this article apply exclusively to new members, unless expressly stated otherwise.

(b) For purposes of this article, "classic members" are members who do not meet the definition of new members as provided by Government Code section 7522.04(f).

6. Government code section 20160, provides in relevant part:

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction

of the error or omission, as those obligations are defined by Section 20164.

- (d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).
- (e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:
 - (1) That the correction cannot be performed in a retroactive manner.
 - (2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

- (3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

Burden and Standard of Proof

7. "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.) Thus, the party asserting a claim or making charges has the burden of proof in administrative proceedings. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) Put another way, there is a built-in bias in favor of the status quo; the party seeking to change the status quo usually has the burden of proving the change is appropriate. (*Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.) Respondents concede they bear the burden of establishing that CalPERS has incorrectly enrolled them as new members rather than classic members. The standard of proof in this matter is the preponderance of the evidence. (*McCoy, supra*, 183 Cal.App.3d at p. 1051.) That standard of proof is met when a party's evidence has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Analysis

RESPONDENTS ARE CORRECTLY ENROLLED AS NEW MEMBERS

8. Section 20305 is an exception to the rule in section 20281 that all employees are automatically enrolled into CalPERS upon their hiring. Subdivision (a) of section 20305 provides that persons who have appointment or employment contracts that do not fix a term of full-time, continuous employment in excess of six months are excluded from CalPERS membership unless an exception applies. Here, respondents' offer letters did not provide for a term of full-time continuous employment of more

than six months, and respondents have pointed to no other records from the City about their appointment suggesting otherwise. Section 20305 therefore applies to respondents' CalPERS enrollment.

9. When it applies, section 20305 provides three pathways to eligibility for CalPERS enrollment, including: (1) previous eligibility for CalPERS enrollment; (2) work for over one year on a part-time basis; or (3) work for over six months (or over 1,000 total hours) on a full-time basis. Subdivision (a)(1) does not apply here because respondents were not members at the time of their appointment. Although respondents were working as police cadets at the time of their appointment, the position of police cadet is excluded from membership in the contract between the City and CalPERS. (Factual Finding 15.) Subdivision (a)(2) also does not apply as it requires work for a year or longer, and respondents were not employed for longer than a year as police recruits. (Factual Findings 8-9, 11.)

10. Respondents' membership is governed by subdivision (a)(3) of section 20305. Subdivision (a)(3)(A) of section 20305 provides an exception to the exclusion for part-time employees if the position is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of several conditions. Those conditions include that the appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time employment continues for longer than six months, then the employee is eligible for employment during the first pay period of the seventh month. Alternatively, respondents may qualify for membership under subdivision (a)(3)(B), which provides that limited-term employees become eligible after completing 1,000 hours of work within the fiscal year, in which

case they become eligible for membership the first pay period of the month following the month in which 1,000 hours of work are completed.

11. Here, respondents' appointment was for a limited term, i.e., during their period of enrollment in the police academy. There was no guarantee that, upon completion of their time in the academy, the City would hire them as sworn peace officers. (Factual Finding 8.) Thus, in the absence of an appointment or employment contract providing they would be employed on a full-time basis for longer than six months (which would entitle them to enrollment immediately upon their appointment), they were eligible for enrollment upon their seventh month of employment or after working 1,000 hours, whichever was earlier. Respondents did not achieve either of these milestones before 2013, and thus, respondents have been properly enrolled as new members under PEPRA. (Factual Findings 9–11.)

12. Additionally, regardless of whether respondents became eligible for membership by working for six months or 1,000 hours, they would not have achieved either milestone before February 15, 2013. (Factual Finding 10.) Accordingly, the City improperly enrolled respondents as members on February 15, 2013.

RESPONDENTS' ARGUMENTS ARE UNAVAILING

13. Respondents contend that section 20305, which bears the title "Part-time Employees" in a commercially available version of the statute, does not apply to them because it is undisputed that they worked a full-time schedule of 40 hours per week while in the academy. But "[t]itles inserted by publishers in commercial versions of the statute do not indicate legislative intent and are not binding on the court." (*Von Becelaere Ventures, LLC v. Zenovic* (2018) 24 Cal.App.5th 243, 249.) Here, section 20305 appears to have been enacted by the Legislature in 1995 under S.B. 541, but the

text of that bill does not provide any section titles. (See 1995 Cal. Legis. Serv. Ch. 379 (S.B. 541).) And even if the Legislature had titled section 20305 "Part Time Employees," the plain language of that section makes clear that it applies even to "full-time" employees under certain circumstances, or to seasonal, limited-term, or intermittent employees. (See *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 602 ["Title or chapter headings are unofficial and do not alter the explicit scope, meaning, or intent of a statute."].)

14. Moreover, respondents contend that because the City and respondents both expected respondents would be appointed as full-time police officers at the end of their time in the academy, that this is sufficient to be considered a full-time employee upon their hire as a police recruit. But as noted above, section 20305 is clear: in the absence of an appointment or employment contract stating the position is full-time and is expected to last longer than six months, an employee is only eligible for membership using one of the exemptions outlined in section 20305, subdivision (a)(1)–(3).

15. Article XVI, section 17, subdivision (b), of the California Constitution also does not support a different result. That subdivision provides, in relevant part, "[a] retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty." Respondents suggest that CalPERS abdicated this duty by refusing to characterize respondents as "classic members" rather than new members. But as noted above, CalPERS has properly characterized respondents as new members. Designating respondents as classic members under these circumstances would be impermissible, as it would result in respondents receiving greater benefits than those to which they are entitled under PERL. The purpose of subdivision (b) of Article XVI, section 17, is to "ensure the rights of members and retirees to their full, earned

benefits" and thus "does not authorize an order compelling [CalPERS] to pay greater benefits than [the Government Code] allows....." (*City of Pleasanton v. Board of Administration* (2012) 211 Cal.App.4th 522, 544 (*City of Pleasanton*); see also *Blaser v. State Teachers' Retirement System* (2022) 86 Cal.App.5th 507, 537 [improper payment of retirement benefits is an impermissible gift of public funds prohibited by the California Constitution].)

16. Finally, respondents contend that CalPERS should be estopped from characterizing them as new members because respondents relied on Tintel's representation that they would be classic members upon their hiring as police cadets. Relying on *Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567 (*Crumpler*), respondents assert that Tintel's representation is also binding on CalPERS. Respondents' estoppel arguments are unconvincing.

17. A party alleging equitable estoppel must show: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488–489.) In *Crumpler*, the city had misclassified animal control officers as police officers. When the misclassification came to CalPERS's attention, it reclassified the officers retroactively as miscellaneous members, and the employees sued. (32 Cal.App.3d 567.) The trial court set aside CalPERS' decision in part on grounds of estoppel, and the Court of Appeal affirmed. (*Id.* at pp. 583–584.) *Crumpler* recognized the rule that estoppel cannot enlarge a public agency's statutory or constitutional authority, but found the rule was inapplicable because section 20124

(now section 20125) gives CalPERS the sole discretion to determine who is eligible to receive and who may continue to receive benefits.

18. "The first element of estoppel, that PERS knew the true facts, requires proof of either actual knowledge or of 'careless and culpable conduct resulting in the deception of the party entitled to claim the estoppel.'" (*City of Pleasanton, supra*, 211 Cal.App.4th at p. 543 [citation omitted].) Here, no evidence suggests CalPERS knew Tintel initially represented to respondents that they would be "classic members" to induce them to enter the police academy or that he later informed respondents they would in fact be new members some time later. "[CalPERS's] fiduciary duty to its members does not make it an insurer of every retirement promise contracting agencies make to their employees. [It] has a duty to follow the law." (*Id.* at p. 544.) Nor may an agency bind CalPERS to an erroneous interpretation of the PERL. (*Ibid.*)

19. And in any event, the *City of Pleasanton* court rejected the argument that a city and CalPERS were in privity under similar circumstances such that estoppel would apply:

We reject Linhart's claim that Pleasanton and PERS are in privity for estoppel purposes such that the city's knowledge and negligence can estop PERS from determining pensionable compensation according to law. (See *Hudson v. Board of Administration* (1997) 59 Cal.App.4th 1310, 1331–1332, 69 Cal.Rptr.2d 737 [allowing conduct of contracting agency to estop PERS would usurp PERS's statutory authority to determine compensation for retirement purposes and permit such agencies to disregard the

applicable law].) To the extent that *Crumpler* suggests otherwise, we do not find it persuasive.

(*Id.* at p. 543, fn. 11.) Accordingly, because respondents cannot meet all the necessary elements of estoppel, CalPERS is not estopped from characterizing respondents as new members rather than classic members under these circumstances.

20. Finally, although it is no doubt troubling to respondents that the City may have enrolled other police recruits as CalPERS members immediately upon their hiring, that issue is beyond the scope of this hearing, which is limited solely to the propriety of respondents' enrollment. The appropriateness of the City's CalPERS enrollment practices for other police recruits is a matter to be resolved separately between the City and CalPERS.

ORDER

The appeals of respondents Benjamin M. Elizondo and Raphael M. Lee are denied. Respondents are properly enrolled as new members under PEPRA. Moreover, the City has incorrectly enrolled respondents into CalPERS membership as of February 15, 2013, which requires correction under Government Code section 20160.



DATE: 10/17/2025

TAYLOR STEINBACHER

Administrative Law Judge

Office of Administrative Hearings