**ATTACHMENT A**

**THE PROPOSED DECISION**

# BEFORE THE
# BOARD OF ADMINISTRATION
# CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
# STATE OF CALIFORNIA

## In the Matter of the Amended Statement of Issues Regarding the Appeal of Tier Conversion Contract Amendment by:

## SANTA CLARA VALLEY WATER DISTRICT, Respondent

## Agency Case No. 2024-0867

## OAH No. 2025080184

## PROPOSED DECISION

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 24, 2025, and January 29, 2026, in Sacramento, California.

Attorneys Maytak Chin, Preet Kaur, and Mariah Fairley represented the California Public Employees' Retirement System (CalPERS).

Attorneys Jonathan Holtzman, Daniel Cederborg, Zoe Tatarski, and Linda Mason represented respondent, the Santa Clara Valley Water District (the District).

The hearing concluded on January 29, 2026. The ALJ held the record open for the parties to submit closing briefs. On March 9, 2026, CalPERS filed a Notice of

Lodging of Hearing Transcripts, along with certified transcripts of the hearing. The ALJ included the notice and transcripts in the administrative record as Exhibit 59.

On March 13, 2026, CalPERS and the District each filed a closing brief, marked respectively as Exhibits 60 and CC and admitted as argument. On April 3, 2026, CalPERS and the District each submitted a brief responding to the other party's closing briefs. The response briefs were marked respectively as Exhibits 61 and DD and admitted as argument. Additionally, with leave of the court, two labor unions—the International Federation of Professional and Technical Engineers, Local 21; and the American Federation of State, County and Municipal Employees Local 101/Council 57—jointly filed an amicus brief with OAH on February 19, 2026. The ALJ marked the amicus brief as Exhibit EE and included it in the administrative record as argument. The record closed and the matter was submitted for decision on April 3, 2026.

## SUMMARY OF UNDISPUTED FACTS AND ISSUES TO BE DECIDED

### Retirement Plans and Formulas

As California's public pension fund, CalPERS provides retirement and health benefits to current and former employees and their beneficiaries. The Public Employees' Retirement Law (PERL; Gov. Code, § 20000 et seq. [all future statutory references are to the Government Code unless specified otherwise]), the California Public Employees' Pension Reform Act of 2013 (PEPRA; § 7522 et seq.), and associated regulations (Cal. Code Regs., tit. 2, § 550 et seq.) govern CalPERS.

As relevant to this matter, CalPERS calculates an employee's pension, known as a retirement benefit, by multiplying their years of service by a percentage of their final compensation at retirement. The final compensation is based on their highest annual

compensation in either the one-year period or three-year period preceding their retirement, subject to statute and election by the contracting employer. Similarly, subject to statutory limits, an employer's contract with CalPERS establishes the age of retirement eligibility and percentage of compensation to apply. The percentage of compensation is known as the "benefit factor."

Collectively, the benefit factor and age of retirement eligibility are known as the "retirement formula." Retirement formulas are commonly expressed as a percent and an age, such as "2% at 62," followed by a final compensation period. For example, under a 2% at 62 plan with a one-year final compensation period, a member can retire at 62 years old and receive an annual retirement benefit equal to their final year's compensation multiplied by two percent of their years of service. Thus, an employee who worked for 20 years under a 2% at 62 plan with a one-year final compensation period could retire at 62 years old and receive a retirement benefit of 0.4, or 40 percent, of their final annual compensation. (Two percent of 20 is 0.4, or 40 percent.)

## The District's Retirement Plans Under its Contract with CalPERS

The District is a public agency that contracts with CalPERS to provide retirement benefits to many of its employees. The District entered into its original contract with CalPERS in 1961 and has since amended the contract several times. The employees who receive retirement benefits under the parties' contract are classified as local miscellaneous members of CalPERS.

As of early 2012, the District's contract with CalPERS provided a 2.5% at 55 plan, with a one-year final compensation period. For purposes of this case, that has been termed the District's "Tier I" plan.

Effective March 19, 2012, the District amended its contract with CalPERS. Pursuant to the amended contract, the District maintained its Tier I plan for existing employees but instituted a new "Tier II" plan for any employees hired after March 19, 2012. The Tier II plan provides for 2% at 60, with a three-year final compensation period.

## The District's PEPRA Plan

On January 1, 2013, PEPRA became law. Under PEPRA, all employees who became CalPERS members on or after January 1, 2013, are subject to the PEPRA retirement formula of 2% at 62 with a three-year final compensation period. In addition to the Tier I and Tier II plans, the District maintains a "Tier III" plan consistent with PEPRA. Members of both Tiers I and II are referred to as "classic" or "legacy" members. Members of Tier III are referred to as "new members" or "PEPRA members."

## The District's Request to Eliminate its Tier II Plan

On August 6, 2024, the District sent a letter to CalPERS formally requesting "to amend [its] contract to eliminate [its] Tier II plan, and to place all current and future employees who qualify for that plan in Tier I on a prospective basis only." The request would have no effect on new CalPERS members, who would remain in Tier III.

On August 29, 2024, Melody Benavides, Chief of CalPERS's Pension Contracts Prefunding Program Division, sent the District a letter rejecting its request. Ms. Benavides explained, in relevant part, that section 7522.02, subdivision (c)(1), of PEPRA "restricts an employer's ability to amend its contract to modify the classic formula that is available to new classic hires." Ms. Benavides further explained:

> Pursuant to [section 7522.02, subdivision (c)(1)], a newly hired classic employee is subject to the employer's retirement benefit formula that was active and in place as of December 31, 2012. The retirement benefit formula that the District had in place as of December 31, 2012 is 2% at age 60 (Gov. Code § 21353) for local miscellaneous members. Although the District previously offered the 2.5% at 55 formula to new miscellaneous members, this option was no longer available once the District amended its contract to provide a second-tier formula for new miscellaneous members on March 19, 2012. Further, while section 7522.44 of PEPRA may contemplate certain prospective only benefit enhancements, the restrictions described above preclude prospective enhancements to the District's classic benefit formula.

On September 27, 2024, the District timely appealed CalPERS's rejection of its request. In August 2025, CalPERS filed a Statement of Issues with OAH and requested that the matter be scheduled for a hearing pursuant to California Code of Regulations, title 2, section 555.2. OAH scheduled the matter for a hearing to begin on November 24, 2025.

On November 4, 2025, Ms. Benavides sent the District a supplemental response to its August 2024 request to amend its contract to eliminate its Tier II plan. In her supplemental response, Ms. Benavides reiterated that section 7522.02, subdivision (c)(1), of PEPRA prevents CalPERS from granting the District's request. She further

explained that PERL also precludes CalPERS from granting the request. Specifically, she wrote, in relevant part:

> The PERL precludes CalPERS from implementing a contract amendment to provide retirement benefits for some, but not all, local miscellaneous members. (Gov. Code § 20479.) The District's miscellaneous population is comprised of both classic members and new members who are subject to PEPRA. As the District's new members are restricted to the mandatory PEPRA retirement formula of 2% at age 62 (Gov. Code § 7522.20), Government Code section 20479 precludes the District from amending its contract to increase the retirement formula for its classic members while also retaining the mandatory PEPRA formula for new members, because that increase would be afforded to only some, not all, of its miscellaneous population.

On November 5, 2025, CalPERS filed an Amended Statement of Issues in which it contended both section 7522.02, subdivision (c)(1), of PEPRA and section 20479 of PERL prohibit CalPERS from granting the District's request to amend its contract to eliminate its Tier II plan on a prospective basis. The District's original appeal was deemed applicable to the Amended Statement of Issues pursuant to section 11507. This hearing followed.

## Issues to be Resolved

The two issues to be resolved in this matter are: (1) whether section 7522.02, subdivision (c)(1), of PEPRA prohibits CalPERS from granting the District's request to

amend its contract to eliminate its Tier II plan on a prospective basis; and (2) whether section 20479 of PERL prohibits CalPERS from granting the District's request to amend its contract to eliminate its Tier II plan on a prospective basis.

## EVIDENCE AND ARGUMENTS

### PEPRA

1. The language in section 7522.02, subdivision (c)(1), that is relevant to this matter provides:

> Individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, shall be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012 . . . .

2. On its face, the language is clear. It governs what retirement plan applies for classic members who started their employment pre-PEPRA but moved to a different CalPERS-covered employer post-PEPRA. Such employees are subject to "the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012." That is, they are subject to the plan that would have been available to pre-PEPRA employees at the subsequent employer.

3. However, as applied in this case, when the District is (or would be) the subsequent employer, the statute is ambiguous because the District maintained two plans for pre-PEPRA employees. Therefore, the phrase "the retirement plan" permits multiple reasonable interpretations, which is the definition of ambiguity.

4. CalPERS argued the phrase "the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012" means the plan that would have been "in effect and available to new employees before PEPRA's enactment." (See Exhibit 60, page 7, lines 20–23.) However, as explained above, two District plans were in effect for those employed on or before December 31, 2012. Employees who started their employment on or before March 19, 2012, were subject to Tier I, and employees who started their employment between March 20 and December 31, 2012, were subject to Tier II. CalPERS's interpretation requires rewording the phrase "first employed by the [District] on or before December 31, 2012" to "employed by the [District] as of December 31, 2012."

5. In contrast, the District argued the phrase "the retirement plan that would have been available to employees . . . first employed by the [District] on or before December 31, 2012" uses the past conditional tense in the wording "that would have been available." (See Exhibit DD, page 6, lines 18–22.) The District contends that wording includes Tier I. That is accurate. Tier I is a plan that would have been available to employees who were first employed by the District on or before March 19, 2012, a time period that "on or before December 31, 2012" subsumes.

6. However, that interpretation of the statute also undermines the District's position because "the retirement plan that would have been available to employees . . . first employed by the [District] on or before December 31, 2012" also includes Tier II.

That is the plan that would have been available to employees who were first employed by the District between March 20 and December 31, 2012, a time period that "on or before December 31, 2012" also subsumes.

7. Furthermore, as the District notes, the phrase "would have been available" is the *past* conditional tense. Compare, for example, a hypothetical statute that includes that language written in the present tense: "Individuals who were employed by any public employer before January 1, 2013, and who became employed by [the District] for the first time on or after January 1, 2013, shall be subject to the retirement plan that *is* available to employees of the [District] who were first employed by the [District] on or before December 31, 2012."

8. Through the past tense phrasing, the statute is clear that present day actions cannot alter the subject of the clause (i.e., the retirement plan). In other words, nothing the District does today can affect what retirement plan would have been available in the past.

9. As a result, CalPERS is correct that section 7522.02, subdivision (c)(1), prevents the District from eliminating its Tier II plan. For employees who first began employment with the District between March 20 and December 31, 2012, the only plan they could have entered was Tier II. That was "the retirement plan that would have been available" to them.

10. If CalPERS were to permit the District to amend its contract to eliminate its Tier II plan, the question remains: what retirement plan would apply for classic lateral hires who first began their employment with a CalPERS-contracting entity between March 20 and December 31, 2012? If Tier II were eliminated, those employees would be subject to Tier I. But that was not "the retirement plan that would have been

available" to them had they begun their employment at the same time but with the District rather than a different employer. Tier II therefore cannot be eliminated because it would make it impossible to apply section 7522.02, subdivision (c)(1), for classic lateral hires who first began their employment with a CalPERS-contracting entity between March 20 and December 31, 2012.

11. The legislative history and intent of PEPRA support that conclusion. When a statute is ambiguous, courts may consider the legislative history and "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 (citing *People v. Coronado* (1995) 12 Cal.4th 145, 151; *Escobedo v. Estate of Snider* (1997) 14 Cal.4th 1214, 1223).)

12. Here, the parties submitted extensive evidence about the legislative history and intent of PEPRA. (See Exhibits 7–20 and C.) It is clear from that evidence that the intent of section 7522.02, subdivision (c)(1), was to allow classic employees to move between employers and retirement systems without being forced into the PEPRA retirement plan. Thus, when a classic employee moves from one employer to another, they are subject to the plan in which they would have participated had they begun their employment with the second employer.

13. The consequence of that interpretation is that classic employees who move from a CalPERS-contracting employer to the District would be subject to either Tier I or Tier II, depending on the date they began employment with the previous employer. The evidence at hearing was that, with few exceptions, CalPERS places classic employees transferring from another public employer to the District into Tier II regardless of their employment start date. Those employees are not parties to this

case, and the accuracy of their placements is not an issue to be decided here. As such, this decision takes no position on either issue.

14. However, permitting the District to eliminate its Tier II plan would mean that classic employees who first began employment with a CalPERS-contracting entity between March 20 and December 31, 2012, and subsequently began employment with the District after January 1, 2013, would be subject to Tier I regardless of their start date at the previous employer. Although it is clear the Legislature intended to allow classic employees to change jobs without becoming subject to the PEPRA plan, there is nothing in the extensive legislative history evidence to suggest the Legislature intended such employees to be subject to a different plan than the one that would have been available to them had they begun their employment with the subsequent employer rather than the initial employer.

## PERL

15. The language in section 20479 that is relevant to this matter provides:

> [N]o contract or contract amendment shall be made to provide retirement benefits for some, but not all members of the following membership classifications: local miscellaneous members . . . .
>
> No contract or contract amendments shall provide different retirement benefits for a subgroup, including, but not limited to, bargaining units or unrepresented groups, within those membership classifications.

16. CalPERS noted that as part of the District's request to eliminate its Tier II plan, it intends to move all current and future classic members into Tier I on a prospective basis. CalPERS argued section 20479 forbids this because it would enhance the benefits for current Tier II local miscellaneous members without also enhancing the benefits for Tier III PEPRA employees, who are also local miscellaneous members. (See Exhibit 60, page 10, line 26 through page 11, line 7.)

17. The District argued section 20479 addresses only "optional benefits," not the creation of tiers. (See Exhibit CC, page 12, lines 18–19.) However, section 20479 uses the unambiguous phrase "retirement benefits." The last sentence of the section clarifies, "For purposes of this section, 'benefit' shall not be limited to the benefits set forth in Section 20020." Section 20020, in turn, defines "benefits" as "the retirement allowance, basic death benefit, limited death benefit, special death benefit, any monthly allowance for survivors of a member or retired person, the insurance benefit, the partial disability retirement program payment, or refund of accumulated contributions." Thus, the term "retirement benefits" includes both the section 20020 benefits and other optional benefits. The District's argument to the contrary is rejected.

18. The District further argued it should be permitted to eliminate its Tier II plan because the effect of doing so would be to treat all classic members the same, which is the purpose of section 20479. (See Exhibit CC, page 13, lines 12–16.) This argument is also rejected.

19. CalPERS permitted the District to create Tier II before PEPRA under section 20475, which authorizes a contracting employer to amend its contract "to reduce benefits, to terminate provisions that are available only by election of the agency to become subject thereto, to provide different benefits or provisions or to

provide a combination of those changes with respect to service performed after the effective date of the contract amendment made pursuant to [section 20475]."

20. The District's March 19, 2012, contract amendment with CalPERS (Exhibit 22) explicitly referenced section 20475:

> 11. [The District] elected and elects to be subject to the following, optional provisions:
>
> [¶] . . . [¶]
>
> l. Section 20475 (Different Level of Benefits). Section 21353 (2% [at] 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract.

21. Thus, a different section of the PERL authorized the District to create Tier II because it was a reduction in benefits. Nothing in section 20475 or 20479 authorizes an enhancement to benefits that would apply only to some employees. Indeed, section 20479 prohibits such a selective enhancement by barring contract amendments that would provide retirement benefits for some, but not all, members of membership classifications. The relevant membership classification here is local miscellaneous, which includes both classic and PEPRA employees. (See § 20371, subd. (a).)

22. Finally, the District argued there is tension between PEPRA, which statutorily treats employees within the same member classification differently based on their hire date, and section 20479, which forbids such differential treatment. The

District argued that section 20479 must be harmonized with PEPRA. Specifically, the District argued PEPRA, as a "special" and more specific law, "provides an exception to the rule [from section 20479] that all members receive the same retirement benefits." (See Exhibit CC, page 15, lines 2–5.)

23. In response, CalPERS argued "PEPRA and section 20479 are not inconsistent and can in fact coexist without imposing an implied exception." (See Exhibit 61, page 3, lines 12–13.) CalPERS contended that, when read together, PEPRA and section 20479 prohibit future enhancements to classic members' benefits that PEPRA members cannot receive. (*Id.* at lines 22–24.)

24. CalPERS's argument is more persuasive because it interprets the two statutes without a conflict. In contrast, the District's position is that PEPRA created an exception to section 20479 when it treated employees of the same member classifications differently by creating a mandatory PEPRA tier. Under the District's reasoning, that exception persists such that employers can modify retirement plans for classic members without regard to how those modifications would affect PEPRA members:

> [T]he Legislature did not intend new members to be equal with respect to classic members in the same classification. It carved out new members from the equality requirements of section 20479, intending to allow contracting agencies to continue to elect enhanced classic retirement formulas, so long as the enhancements were not retroactive and were applied equally to all classic members of a classification.

(See Exhibit DD, page 8, line 26 through page 9, line 1.)

25. Essentially, the District argued that its interpretation of PEPRA and section 20479 reveals a conflict, and the court should resolve the conflict by finding that the more specific statute (PEPRA) prevails over the more general statute (section 20479). However:

> The rule that a specific statute prevails over a general one applies only if the two provisions cannot be reconciled. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478 [66 Cal.Rptr.2d 319, 940 P.2d 906].) We must construe two statutes dealing with the same subject in a way that harmonizes them, avoids conflict, and avoids rendering any part of either statute surplusage, if feasible. (*Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066, 1086 [90 Cal.Rptr.2d 334, 988 P.2d 67]; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 778-779 [38 Cal.Rptr.2d 699, 889 P.2d 1019].) "If we can reasonably harmonize '[t]wo statutes dealing with the same subject,' then we must give 'concurrent effect' to both, 'even though one is specific and the other general. [Citations.]' [Citation.]" (*Garcia*, *supra*, at p. 478.)

(*Superior Dispatch, Inc., v. Insurance Corp. of New York* (2010) 181 Cal.App.4th 175, 189.)

26. Here, CalPERS interprets PEPRA and section 20479 harmoniously. That interpretation is reasonable. A contrary conclusion would necessarily find not that PEPRA created an implied exception to section 20479, but that it in fact violated section 20479 by making certain retirement benefits available to some, but not all,

members of the same membership classifications. The undersigned declines to interpret one statute as violating another when a different reasonable interpretation exists. Thus, as a matter of statutory construction, the court must favor CalPERS's interpretation.

## LEGAL CONCLUSIONS

1. PERL, PEPRA, and associated regulations govern CalPERS. Under section 7522.02, subdivision (c)(1), of PEPRA:

> Individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, shall be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012, if the individual was subject to concurrent membership for which creditable service was performed in the previous six months or reciprocity . . . .

2. As explained above, the District's request to amend its contract with CalPERS to eliminate its Tier II retirement plan and move all current and future employees who qualify for that plan into its Tier I plan, on a prospective basis, would mean that individuals who were employed by a different public employer before January 1, 2013, and who became employed by the District for the first time on or after January 1, 2013, would not be subject to the retirement plan that would have been

available to District employees who were first employed by the District between March 20 and December 31, 2012. Such a result would be inconsistent with section 7522.02, subdivision (c)(1), of PEPRA. Therefore, for the reasons explained in paragraphs 1 through 14 above, section 7522.02, subdivision (c)(1), of PEPRA prohibits CalPERS from implementing the District's request to amend its contract with CalPERS to eliminate its Tier II retirement plan and move all current and future employees who qualify for that plan into its Tier I plan, on a prospective basis.

3. As relevant to this matter, section 20479 of PERL provides:

> [N]o contract or contract amendment shall be made to provide retirement benefits for some, but not all members of the following membership classifications: local miscellaneous members . . . .
>
> No contract or contract amendments shall provide different retirement benefits for a subgroup, including, but not limited to, bargaining units or unrepresented groups, within those membership classifications.

4. As explained above, the District's request to amend its contract with CalPERS to eliminate its Tier II retirement plan and move all current and future employees who qualify for that plan into its Tier I plan, on a prospective basis, would result in Tier II employees, who are local miscellaneous members, receiving enhanced benefits that Tier III PEPRA employees, who are also local miscellaneous members, would not receive. Such a result would be inconsistent with section 20479 of PERL. Therefore, for the reasons explained in paragraphs 15 through 26 above, section 20479 of PERL prohibits CalPERS from implementing the District's request to amend its

contract with CalPERS to eliminate its Tier II retirement plan and move all current and future employees who qualify for that plan into its Tier I plan, on a prospective basis.

5. Based on Legal Conclusions 2 and 4, the District's appeal must be denied.

## ORDER

Santa Clara Valley Water District's appeal of CalPERS's August 29, 2024, rejection and November 4, 2025, supplemental rejection of the District's August 6, 2024, request to amend its contract with CalPERS to eliminate its Tier II retirement plan and move all current and future employees who qualify for that plan into its Tier I plan, on a prospective basis, is DENIED.

DATE: April 30, 2026

SEAN GAVIN
Administrative Law Judge
Office of Administrative Hearings