

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DECLINE TO ADOPT THE PROPOSED DECISION AND REMAND TO THE OFFICE OF ADMINISTRATIVE HEARINGS

Factual Background

Santa Clara Valley Water District (the District) is a participating employer that contracts with CalPERS to provide public retirement benefits to its local miscellaneous employees.

Pursuant to Government Code (GC) section 20475 of the Public Employees' Retirement Law (PERL), the District amended its CalPERS contract in 2012 to create a lower retirement benefits tier ("Tier II"), and to close its existing, more generous retirement benefits tier ("Tier I") to new District hires ("2012 Contract Amendment"). The 2012 Contract Amendment included the following tiers based on date of hire and specified normal retirement ages: (1) Tier I (employees hired prior to or on March 19, 2012): 2.5% at age 55; and (2) Tier II (employees hired after March 19, 2012): 2% at age 60. Thus, the only tier available for new District hires after March 19, 2012 under the 2012 Contract Amendment was Tier II. Tier I was no longer available to new District hires after March 19, 2012, making it a closed tier. Less than a year later, on January 1, 2013, the Public Employees' Pension Reform Act of 2013 (PEPRA) went into effect. Under PEPRA, GC section 7522.20 required that all local miscellaneous PEPRA Members receive the statutory retirement formula of 2% at age 62.

In 2020, the District again amended its CalPERS contract ("2020 Contract Amendment"). With its 2020 Contract Amendment, the District made two substantive changes: (1) it gave its employees the option for partial service retirement pursuant to PERL section 21118; and (2) it memorialized the statutory retirement formula under section 7522.20 as its PEPRA Tier. The parties have made no contract amendments since the 2020 Contract Amendment.

In 2024, the District sent a formal request to CalPERS, seeking to amend its contract to prospectively delete its Tier II, and reopen its Tier I to place all current and future employees who currently qualify for Tier II into the reopened Tier I instead. The District has made clear that it is seeking to provide this benefit enhancement to its Classic Members to the exclusion of its PEPRA Members. CalPERS denied the District's request on the grounds that PEPRA and the PERL froze Classic Member retirement formulas, thereby barring the District's request as a matter of law. On August 29, 2024, CalPERS sent the District a formal letter denying the District's request, citing GC section 7522.02, subdivision (c)(1) of PEPRA as the basis for the denial. On November 4, 2025, CalPERS sent the District a supplemental response letter, reiterating its position that GC section 7522.02(c)(1) of PEPRA prohibits CalPERS from implementing the District's request and citing GC section 20479 of the PERL as an additional basis for denial. The District appealed CalPERS' denial of its request.

Procedural Background

On November 24, 2025, and January 29, 2026, the parties appeared before an Administrative Law Judge (“ALJ”) with the Office of Administrative Hearings (“OAH”). The two issues to be resolved by the ALJ were:

- (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. (Prop. Dec. at pp. 6-7.)

The ALJ heard testimony and admitted evidence into the administrative record. At the close of the administrative record, both parties agreed that the dispositive issue in this administrative proceeding is a matter of statutory construction, and the ALJ allowed the parties to submit closing briefing in lieu of oral closing 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 curiae brief with OAH on February 19, 2026, in support of the District’s request.

Following closing briefing, the ALJ denied the District’s appeal, concluding that each statute, GC section 7522.02(c)(1) and GC section 20479, “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.” (Prop. Dec. at pp. 16-17, ¶ 2; pp. 17-18, ¶ 4.) In other words, the ALJ concluded that GC section 7522.02(c)(1) and GC section 20479 each independently support CalPERS’ denial.

Basis for Remand

While the ALJ correctly found that GC section 7522.02(c)(1) and GC section 20479 each independently support CalPERS’ denial of the District’s request, the ALJ included incorrect analysis in his discussion of GC section 7522.02(c)(1) that could cause confusion as to that statute’s application if the Proposed Decision were adopted by the Board, and requires further briefing by the parties.

GC section 7522.02(c)(1), provides, in relevant part:

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[.]

The Proposed Decision correctly recognizes that GC section 7522.02(c)(1), “[t]hrough the past tense phrasing,” makes clear “that present day actions cannot alter the subject of the clause (i.e., the retirement plan).” (Prop. Dec. at p. 9, ¶ 8.) The Proposed Decision further recognizes, “nothing the District does today can affect what retirement plan would have been available in the past.” (*Ibid.*) Based on this, the ALJ correctly determined that GC section 7522.02(c)(1) foreclosed the District’s ability to delete its existing Tier II. (Prop. Dec. at p. 9, ¶ 9.)

However, the Proposed Decision incorrectly concludes that “the retirement plan” referenced in GC section 7522.02(c)(1) can be either Tier I or Tier II. (Prop. Dec. at pp. 8-9, ¶¶ 5-6.) Contrary to the ALJ’s conclusion, “the retirement plan” in GC section 7522.02(c)(1) can only be Tier II, because Tier I was no longer available to the District’s new hires effective March 20, 2012, due to the District’s 2012 Contract Amendment, regardless of a new hire’s original date of employment with a prior CalPERS employer. This issue of whether GC section 7522.02(c)(1) can effectively reopen the closed Tier I to Classic Members who are new hires to the District post-PEPRA was raised for the first time by the ALJ in the Proposed Decision and requires further proceedings on remand to address the issue.

Accordingly, staff recommends remand of this matter to the ALJ for the taking of further evidence.

July 15, 2026

COLLEEN KENNEDY
Associate General Counsel