



# *VCERA v. Criminal Justice Attorneys Assn., et al. Decision*

Presented to the Board of Retirement of Ventura County Employees' Retirement Association

February 26, 2024



# Today's Presenter



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## Decision in *VCERA v. CJAAVC, et al.*

- On January 4, 2024, the Second District Court of Appeal issued a unanimous decision in *Ventura County Employees Ret. Assoc. v. Criminal Justice Attorneys' Assn., et al.* (2024) ---Cal.Rptr.3d--- (Cal.App. LEXIS 26\*) (“*VCERA*”), which was published on January 18, 2024.
- In *VCERA*, the Court affirmed the Santa Barbara Superior Court’s conclusion that the VCERA Board of Retirement (Board) correctly implemented the changes to the definition of compensation earnable in Government Code section 31461(b), in its *Alameda* Implementation Resolution (adopted October 12, 2020) (“October 12, 2020 Resolution”), with respect to the pensionability of leave cash outs for legacy members.

# Holding in the *VCERA* decision

- Specifically, the court held “the Board was required to comply with section 31461, subdivision (b) and *Alameda* and exclude compensation for unused leave exceeding their calendar year allowances.” (Emphasis added.)
- The court in *VCERA* then recited frequently quoted language from the California Supreme Court’s *Alameda* decision that “The task of a county retirement board is not to design the county’s pension plan but to implement the design enacted by the Legislature through CERL.”
- The court concluded its opinion as follows: “The Board had no authority here to ‘adopt or act on an interpretation [of CERL’s provisions] that is inconsistent with those provisions.’ [Citation omitted.]”

# Holding in the *VCERA* decision

- **Takeaway:** The Court affirmed the Board’s implementation of *Alameda* regarding the limits on the pensionability of straddled leave topic. Specifically, the Court affirmed that annual cashout limits—as defined in rules applicable to a member’s employment (e.g., an **MOA**)—is the appropriate measure of what is “payable” in determining the amount of leave that is pensionable for legacy members.
- **Further takeaways:** By confirming that even if the *Alameda* Court’s discussion of the pensionability of straddled leave cashouts were “dicta,” the Court’s discussion and conclusions on that topic must be followed by CERL systems, the *VCERA* decision gave further force, and meaning, to the *Alameda* decision.



## “The Second Issue”

- In footnote no. 5 of the *VCERA* decision, the court stated:

“Appellants do not challenge the trial court’s resolution of the second issue—whether *VCERA* can exclude from compensation earnable leave cashouts that exceed annual cashout limitations for members who retired on or after January 1, 2013, *PEPRA*’s effective date. Accordingly, we will not address this issue or disturb the trial court’s ruling on this issue. (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5<sup>th</sup> 467, 555 [issues not raised in appellant’s opening brief are deemed waived].)”



## Status of the *VCERA* decision

- The Court of Appeal decision is final, and no petition for Supreme Court review was filed.
- The Court of Appeal accepted amicus briefing filed by VCERA retirees on the “Second Issue,” but the Court did not grant retirees’ request that it reverse the trial court ruling on that topic (as discussed below).



## Trial Court – Stipulated Issue No. 2

Prior to trial, all parties to the litigation, including VCERA, the County of Ventura, four unions and Leroy Smith, stipulated that the court was to resolve the following “Issue No. 2”:

*“If VCERA must exclude the leave cashouts described in Issue 1A and/or 1B, must VCERA exclude such leave cashouts from the calculation of retirement benefit payments made on or after August 31, 2020 to VCERA members who retired on or after January 1, 2013?”*





# Trial Court – Stipulated Issue No. 2 (cont.)

Two topics implicated by Stipulated Issue No. 2:

1. To **whom** does the new exclusion required by section 31462(b)(2) apply?
2. What **pay periods** must be corrected?



## Trial Court – Stipulated Issue No. 2 (cont.)

In briefing, the parties addressed both topics with respect to Stipulated Issue No. 2:

1. The County, Mr. Smith and the unions argued that estoppel prevented VCERA from excluding excess cashouts from pension payments made prior to the October 12, 2020 Resolution.
2. The unions also argued that principles of fairness should be applied to compel VCERA to apply the exclusions prospectively from the date of *Alameda*.
3. The County also argued that VCERA had discretion with respect to the treatment of overpayments and the court could not mandate that overpayments be collected.

# Trial Court Rulings on Stipulated Issue No. 2

- The trial court said that no party disagrees with VCERA on the issue of recoupment, and that the point of agreement is limited to identifying that no party challenges VCERA's manner of implementing *Alameda* on a prospective (as opposed to retroactive) basis.
- The court then said, “in view of this totality of agreement, and on that basis, the Court answers Issue 2 by confirming that VCERA’s prospective implementation as an after August 31, 2020, is not found to violate any principle of law raised by the parties.”
- In other words, the “totality of agreement” was solely on the issue of foregoing recoupment of overpayments, and so the court said VCERA “may” reduce benefits prospectively from August 31, 2020, forward and ***need not recoup overpayments made prior to that date.***

# Trial Court Rulings on Stipulated Issue No. 2

- In the Findings and Conclusions, the court stated:
  - “The Court, having determined Issue 1A and 1B to require exclusion as set forth above, concludes that VCERA may exclude such leave cashouts from the calculation of retirement benefit **payments** made on or after August 31, 2020, to VCERA members who retired on or after January 1, 2013, that is, VCERA does not inappropriately apply [*Alameda*] prospectively with respect to retirement benefit **payments** made prior to the finality of the *Alameda* decision. (emphasis added).”
  - That is, the Court **affirmed that the straddling rules apply to everyone who retired on or after January 1, 2013**, and that in applying those rules, VCERA “may” forego recoupment of overpayments made prior to August 31, 2020.
    - Subsequently, the VCERA Board decided not to recoup **any** overpayments made to retired members as the result of this error, except through offsetting against overpaid contributions, and subject to the IRS approving of its correction methodology.

# Trial Court Rulings on Stipulated Issue No. 2 (cont.)



- Note also: the only argument raised in challenge to VCERA's application of straddling rules to those who retired on or after January 1, 2013 was with respect to estoppel and fairness principles, and ***the trial court clearly rejected those arguments.***

# VCERA Board's Implementation of *Alameda*

- In September 2020, the Board considered, and answered, the following four “key questions” with respect to the implementation of *Alameda*:
  - To whom does *Alameda* apply?
  - As to what period of time are benefits to be corrected?
  - What about member contributions?
  - What pay items must be excluded?
- Those answers were set forth in the Board's October 12, 2020 Resolution, and as to the straddled leave topic, the trial court and court of appeal have now ***affirmed the appropriateness under applicable law of the Board's actions.***

## And Now: To Whom Does the *VCERA* Decision Apply?

- *Alameda* determined that PEPRA's amendments to section 31461 were effective January 1, 2013, as written.
- The Board applied the statute in that manner, and *VCERA* affirmed that approach. Thus, **the *VCERA* decision applies to members who retired from *VCERA* on and after January 1, 2013, and their beneficiaries.**
  - This is consistent with the *Alameda* Court's conclusion: "it is the law ***in effect at the time of retirement*** that is used to calculate the amount of an employee's pension benefit." (Emphasis added.)

# To Whom Does the *VCERA* Decision Apply? (cont.)

- Key Legal Principles:
  - There is no basis to “perpetuate the erroneous construction of CERL,” even as to currently retired members. See *In re Retirement Cases* (2003) 110 Cal.App.4th 426.
  - Retirement boards have no legal authority to create “window periods” that permit members to receive retirement benefits that the applicable law does not authorize. *City of San Diego v. San Diego City Employees’ Retirement System* (2010) 186 Cal.App.4th 69.
  - The VCERA Board applied the amendments to section 31461 as a “PEPRA Exclusions,” which thus applied to VCERA legacy and PEPRA members who retired, and will retire, on and after January 1, 2013, because that was the statute-based law applicable to those individuals when they retired.



# What Now?

- In April 2023, many retirees asked the Board to reconsider its October 12, 2020, Resolution, which set the effective date for implementation of PEPRA exclusions (straddling and payments for services outside normal working hours) to January 1, 2013. These retirees asked for an effective date of April 2023.
- The Board was advised of the points above and did not ask to have the matter brought back for reconsideration. Nothing has changed since then. The same request is being made now.
- No “new” information warrants reconsideration.



Questions?

