

Executive Team

Dominic D. Brown, CPA, CFE
Executive Director

Daryn Miller, CFA
Chief Investment Officer

Jennifer Zahry, JD
General Counsel

Matthew Henry, CFE
Assistant Executive Director

**KERN COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**



Board of Retirement

Rick Kratt, Chair
Dustin Dodgin, Vice-Chair
David Couch
Phil Franey
Juan Gonzalez
Jordan Kaufman
Edward Robinson
Lauren Skidmore
Tyler Whitezell
Bradly Brandon, Alternate
Chase Nunneley, Alternate
Robb Seibly, Alternate

September 24, 2020

Members, Board of Retirement
Employee Bargaining Units
Requesting News Media
Other Interested Parties

Subject: Meeting of the Kern County Employees' Retirement Association
Administrative Committee

Ladies and Gentlemen:

A meeting of the Kern County Employees' Retirement Association Administrative Committee will be held on Wednesday, September 30, 2020 at 8:30 a.m. via teleconference, pursuant to Executive Order N-25-20, issued by Governor Newsom on March 12, 2020, Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and Executive Order N-35-20, issued by Governor Newsom on March 21, 2020. Items of business will be limited to the matters shown on the attached agenda.

If you wish to listen to the teleconference meeting, please dial (888) 788-0099 or (877) 853-5247 U.S. Toll-free (Meeting ID 289-998-6429), or see www.kcera.org for instructions. If you have any questions or require additional service, please contact KCERA at (661) 381-7700 or send an email to administration@kcera.org.

Sincerely,

A handwritten signature in blue ink that reads 'Dominic D. Brown'.

Dominic D. Brown
Executive Director

Attachment

AGENDA:

All agenda item supporting documentation is available for public review on KCERA's website at www.kcera.org following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

**AMERICANS WITH DISABILITIES ACT
(Government Code §54953.2)**

Disabled individuals who need special assistance to listen to and/or participate in the teleconference meeting of the Board of Retirement may request assistance by calling (661) 381-7700 or sending an email to administration@kcera.org. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials and access available in alternative formats. Requests for assistance should be made at least two (2) days in advance of a meeting whenever possible.

Roll Call

1. [Discussion and appropriate action on Special Pay Designations \(Night Court\)](#) presented by Executive Director Dominic Brown and General Counsel Jennifer Zahry – RECOMMEND DESIGNATIONS TO THE BOARD OF RETIREMENT; TAKE OTHER ACTION, AS APPROPRIATE
2. [Discussion and appropriate action on Special Pay Designations \(Bomb Detail and Canine Care\)](#) presented by Executive Director Dominic Brown and General Counsel Jennifer Zahry – RECOMMEND DESIGNATIONS TO THE BOARD OF RETIREMENT; TAKE OTHER ACTION, AS APPROPRIATE
3. [Discussion and appropriate action on Special Pay Designations \(Cafeteria benefit\)](#) presented by Executive Director Dominic Brown and General Counsel Jennifer Zahry – RECOMMEND DESIGNATIONS TO THE BOARD OF RETIREMENT; TAKE OTHER ACTION, AS APPROPRIATE
4. [Response to referral to continue discussion regarding request to consider adding Board of Retirement meeting recordings to the KCERA website and potential options](#) presented by Executive Director Dominic Brown – PROVIDE DIRECTION TO STAFF; TAKE OTHER ACTION, AS APPROPRIATE

5. Public Comments:

This portion of the meeting is reserved for persons to address the Committee on any matter not on this agenda but under the jurisdiction of the Committee. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Committee. Committee members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Committee at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation.

6. Committee Member Announcements or Reports:

On their own initiative, Committee members may make a brief announcement or a brief report on their own activities.

7. Adjournment

SPECIAL PAY CODES FOR DISCUSSION – NIGHT COURT

SEPTEMBER 30, 2020



NIGHT COURT FOR LEGACY MEMBERS

Dept./ BU	Code	Title	Details/Source	Legal Authority
KCSC (court)	NC	<p>Night Court</p> <p>Members Affected by Exclusion: compensation earnable only (“Legacy members”)</p> <p>No change for pensionable compensation (“PEPRA members”)</p>	<p>“Four-hour sessions, beginning at the start time scheduled for night court..”</p> <p>-CFI Agreement 2/1/2020-1/31/2023, Article 6.01.c., 7.01.b.</p> <p>“8% premium on hours worked before 8:00 a.m. or after 5:00 p.m. where such hours are scheduled and not part of any flex program or other temporary schedule changes.”</p> <p>-SEIU MOU 10/1/2017-9/30/2020, Article V, Section 2</p> <p>KCSC representative: Court Services Specialists, Collections Specialist adjust schedules to work NC. No OT, but premium pay paid. Judicial Courtroom Assistants, and Interpreters work a full 8 hour day and then work their night court hours.</p>	<p><i>CERL Cal. Gov. Code §31461(b)(3); Alameda (2020) 9 Cal.5th 1032</i></p>

UPDATE AND PLAN FORWARD

- Met with Kern County Superior Court representatives (KCSC) to discuss mixed use of Night Court (NC) pay code
- No corrective action made for NC pay until BOR approval of NC-related pay codes
- KCSC to submit new Request for Special Pay related to Night Court to distinguish between services performed during normal working hours and services performed outside normal working hours.
- KCSC to obtain historical information regarding use of the NC code from 1/1/13 to present to substantiate pensionability.

RECOMMENDATION

- Recommend the Board of Retirement exclude the Night Court pay code for services rendered outside normal working hours (NC) from Compensation Earnable (“Legacy members”) for members who retire on or after 1/1/13 (effective as to payroll following 8/30/20) and allow Night Court pay (for services during normal working hours) (NC – new code) to be included in Compensation Earnable.

SPECIAL PAY CODES FOR DISCUSSION – SAFETY MEMBERS TRAINING OFFICERS, BOMB DETAIL, CANINE CARE

SEPTEMBER 30, 2020



FIELD AND DETENTION TRAINING OFFICERS

Dept./B U	Code	Title	Details/Source	Legal Authority
KCDOA/ KLEA	LF	<p>FLD/DET Training Officers</p> <p>Members who would be affected if excluded: Pensionable compensation (“PEPRA members”)</p> <p>Remains included for compensation earnable (“Legacy Members”)</p>	<p>“In the event the Sheriffs Office begins a Field Training Officer program, the Department will assign, at the Sheriff-Coroner's discretion, a necessary number of personnel to serve as Field Training Officers...”</p> <p>“The Sheriff-Coroner, in his sole discretion, may maintain a training program for detention officers. As part of the program, the Sheriff-Coroner will assign, in his sole discretion, personnel to serve as Detention Training Officers’. While assigned as a Detention Training Officer, employees shall receive "special assignment pay" equal to five percent (5%) of their base salary.”</p> <p>-KCDOA MOU 1/1/2018-9/30/2019, Article V, Section 7 -KLEA MOU 9/17/2019-6/30/2020, Article IV, Sections 8 & 12</p>	<p><i>Not excluded by PEPRA §7522.34(c)(3),(6),(10) or Alameda Decision</i></p>

UPDATE AND PLAN FORWARD

- Met with KCSO and County representatives
- Determined that Field Training Officers and Detention Training Officers receive this pay for their work with trainees as part of normal working hours and not outside of normal working hours for officers in that same class or grade. (*Stevenson v. Board of Retirement* (2010) 186 Cal.App.4th 498) (“*Stevenson*”)
- FTOs and DTOs undergo internal testing through the KCSO to be eligible to serve as an FTO or DTO and receive LF pay.
- It is not an ad hoc assignment. FTO/DTO training of new officers can extend over many weeks or months and the payment becomes part of the officers’ normal monthly rate of pay. Once the FTO/DTO’s trainee completes their training period, new trainings with new trainees begin.

CANINE CARE

Dept./BU	Code	Title	Details/Source	Legal Authority
KCDOA/ KCPOA/ KLEA	LC	Canine Care Members Affected by Exclusion: Legacy only	<p>“Employees assigned to maintain canines in their homes will receive additional pay equal to 5% of their base salary in full compensation <u>for those hours spent in the home-care</u> of their assigned animals.” -KLEA MOU 9/17/2019-6/30/2020, Article IV, Section 6</p> <p>“Unsupervised and unrecorded hours of work relating to canine <u>care which will occur outside of and in addition to the normal work week.</u>” -KCDOA MOU 1/1/2018-9/30/2019, Article V, Section 11; KCPOA MOU 7/27/2012-7/24/2015, Article V, Section 8</p>	<i>CERL §31461(b)(3) (exclusion for services outside normal working hours; Alameda Decision</i>

UPDATE AND PLAN FORWARD

- Outreach: KCSO, KCPOA, KCDOA, Probation Dept., County representatives
- MOU descriptions more limited than practical use within the Department(s).
- LC pay serves multiple purposes including, assignment pay (service during normal working hours), availability pay (service outside normal working hours), and bonus/incentive pay
- Some purposes (services during working hours) can be included in compensation earnable, but some services must be excluded (e.g., availability pay and other services outside normal working hours)

BOMB DETAIL

Dept./BU	Code	Title	Details/Source	Legal Authority
KLEA	LE	Bomb Detail Members Affected by Exclusion: Legacy and PEPRA	“Employees assigned to the Bomb Detail will be compensated by ‘Special Allowance Pay’ at a bi-weekly rate equal to 5% of their bi-weekly base pay.” -KLEA MOU 9/17/2019-06/30/2020, Article IV, Section 9	<i>CERL §31461(b)(3) and PEPRA §7522.34(c)(7) (exclusion for services outside normal work hours; PEPRA §7522.34(c)(6) (exclusion for allowances, reimbursements, payments); PEPRA §7522.34(c)(10) (exclusion for bonus); §7522.34(c)(3) (exclusion for ad hoc payments; Alameda Decision; Stevenson</i>

UPDATE AND PLAN FORWARD

- Outreach: KCSO, KCPOA, KCDOA, County representatives
- MOU description does not fully reflect practical use within the Department.
- LE pays serve multiple purposes including, certification-type pay, assignment pay (service during normal working hours), availability pay referred to as “special allowance” in the MOU), service outside normal working hours, and bonus/incentive pay
- Some purposes (certification-type pay and services during working hours) can be included in compensation earnable, but some services must be excluded e.g., availability pay and other services outside normal working hours

RECOMMENDATION

- Recommend the following to the Board of Retirement:
 - No change to LF (FLD/DET Training Officers) pay for all members
 - Exclude LC (Canine care), LE (Bomb Detail) from Compensation Earnable (“Legacy members”) for members who retire on or after 1/1/13, effective as to payroll following 8/30/20 (includes exclusion for active and deferred members)
 - Exclude LE (Bomb Detail) from Pensionable Compensation (“PEPRA members”) for members who retire on or after 1/1/13, effective as to payroll following 8/30/20 (includes exclusion for active and deferred members)
 - Refunds on erroneously collected contributions from 1/1/13 forward are subject to adjustment for actives, deferreds, and members who retired after 1/1/13.

SPECIAL PAY CODES DISCUSSION – CAFETERIA BENEFITS

SEPTEMBER 30, 2020



ALLOWANCE – PART-TIME LEGACY MEMBERS ONLY

Dept./BU	Code	Title	Details/Source	Legal Authority
SEIU-SJVAPCD/ unrepresented	DB	Part-time District Cafeteria	<p>“Part-time employees will have the option to participate in the District sponsored health benefits program or to opt out of coverage with proof of comparable health coverage, as determined by the District.” MOU (General)</p> <p>125 Cafeteria plan that employee may receive in cash for any use – MOU</p> <p>SJVAPCD Note: Employee may receive amount in cash for any use.</p>	<i>Not excluded by CERL section 31460, because it is “compensation”; inclusion permitted by Alameda</i>
SEIU-SJVAPCD	DI	Management Cafeteria-Part Time	See above generally, to the extent same provisions apply to Management	<i>See above, subject to ability to receive in cash for any use</i>
SEIU-SJVAPCD	DJ	District Cafeteria For Exec, Part-time	See above, generally, to the extent same provisions apply to Executive *Used from 6/29/2013 to 7/11/2014.	<i>See above, subject to ability for receive in cash for any use</i>

ALAMEDA EXCLUSIONS – NOT COMPENSATION LEGACY MEMBERS ONLY

Dept./BU	Code	Title	Details/Source	Legal Authority
SEIU-SJVAPCD / Unrepresented	DS	Supervisory District Cafeteria	“The District shall contribute a maximum amount of \$955 per month, per employee which shall be used to purchase at least the minimum level of required health coverage. Required coverage includes employee only medical, dental, vision, and life insurance. Employee participation in required benefits shall be mandatory. Remaining funds after purchasing required and optional benefits shall be returned to the employee.” MOU	CERL Cal. Gov. Code §31460; §31461; Alameda (2020) 9 Cal.5th 1032; Marin (2016) 2 Cal.App.5th 674; In re Retirement Cases (2003) 110 Cal.App.4th 426
	DF	Executive District Cafeteria		
	DE	Manager District Cafeteria	The portion of the 125 Cafeteria plan the employee may <u>not</u> receive in cash (“mandatory minimum”) constitutes an in-kind benefit	
	DC	District Cafeteria		

UPDATE AND PLAN FORWARD

- Met with San Joaquin Valley Air Pollution Control District representatives
- DB, DI, and DJ cafeteria benefits for part-time employees are not mandatory; thus, are deemed a pensionable “allowance” for Legacy members who may receive the benefit directly in cash
- The District requires full-time employees who receive DC, DE, DF, DS cafeteria benefits use a portion of those funds for health insurance, dental, vision and life insurance coverage for the member. Thus, the portion of DC, DE, DF, DS benefit that must be utilized to satisfy the employee’s minimum coverages is an in-kind benefit that may not be received in cash.
- *Alameda’s* interpretation of the applicable statutes requires that KCERA exclude any flexible benefit that may not be received by a member in cash.
- KCERA may potentially deem as pensionable the maximum amount of a flexible benefit a member was permitted to receive in cash during the period, rather than limiting the pensionability of the pay code to the amount that *is actually received by a member in cash*. *Hittle v. Santa Barbara County Employees’ Retirement System* (1985) 39 Cal.3d 374. This approach is consistent with other aspects of Gov. Code secs. 31460 and 31461. ⁴

RECOMMENDATION

- Recommend the following to the Board of Retirement:
 - No change to DB, DI, DJ (Part-time cafeteria benefit) for Legacy members (pay codes remain pensionable)
 - Exclude DC, DE, DF, DS (Full-time cafeteria benefit) from compensation earnable for Legacy members who retire on or after 7/30/20 (including actives and deferred members) subject to:
 - approval of a pay code request from the District to identify the flexible benefit that may have been and may be received by such a Legacy member in cash (“excess cash above mandatory minimum coverage”) and
 - refund erroneously collected contributions with applicable interest on the portion of the flexible benefit constituting mandatory minimum coverage from KCERA membership date

Paul Q. Goyette
Gary G. Goyette
Daniel P. Thompson
Rafael Ruano
Brett F. Sherman
Nicole Valentine
Richard P. Fisher
Scott Nelson
Sarah Tobias
David J. Garcia
Rachel E. Simons
Ian D. Woo
Martin Ruano



Labor Representatives:
Steve Allen
Paul Konsdorf
Kim Gillingham
Paul Heckman
Tim Cantillon
David Swim, D.P.A.
Dorothea A. Contreras
Matt Rokes
Tony Silva
Ryan Friesen

Sacramento Office
2366 Gold Meadow Way, Suite 200
Gold River, CA 95670
(916) 851-1900
Toll Free (888) 993-1600
Facsimile (916) 851-1995
info@goyette-assoc.com

Via Email: dominic.brown@kcera.org

Dominic D. Brown,
Executive Director
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield, CA 93311

Copy sent to Jennifer Zahry, KCERA General Counsel, Jennifer.zahry@kcera.org

Re: Implementation of *Alameda* Decision – SJVAPCD Cafeteria Pay

Dear Mr. Brown:

My firm represents the San Joaquin Valley Air Pollution Control District Employees' Association ("Association"), the exclusive representative organization for the general and supervisory employees of the San Joaquin Valley Air Pollution Control District ("District"). This letter is a follow up from my September 8, 2020 letter regarding KCERA's proposed reclassification of the District Cafeteria Pay as non-pensionable, ostensibly in order to comply with the California Supreme Court's *Alameda* decision. The Association respectfully disagrees with KCERA's interpretation of the *Alameda* decision insofar as KCERA staff has proposed that the District's Cafeteria Pay is not "compensation earnable," as defined by Government Code §31461. Critically, the District and the Association are 100% aligned in this matter.

By this letter, the Association intends to examine the relevant Government Code sections and argue that KCERA is actually misinterpreting the plain language of the statute by proposing to designate the District's Cafeteria Pay as non-pensionable. At best, KCERA's current position is legally ambiguous, but the Association will point out the relative risks and liabilities to

KCERA depending which decision it makes. Lastly, the Association wants to illustrate the impact of the proposed reclassification.

The *Alameda* decision, in the relevant portion related to this issue, essentially determined that the 2013 PEPRA legislation was constitutional. As such, the amendments to CERL, including modifications of the language in Government Code § 31461 to the definition of “compensation earnable,” were valid and should be followed. There is no argument from the Association or District on this issue. We are in disagreement with KCERA over the interpretation of the designation of the District’s Cafeteria Pay as not being included in the amended definition of “compensation earnable.” Below is the relevant text of Government Code § 31461:

(a) “Compensation earnable” by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed “compensation earnable” when earned, rather than when paid.

(b) “Compensation earnable” does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member’s retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member’s grade or class.

(C) Any payment that is made solely due to the termination of the member’s employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

The question at hand is KCERA’s interpretation considering the District’s Cafeteria Pay as being excluded from “compensation earnable.” Subsection (b) identifies compensable items that are excluded in “compensation earnable.” Subsection (b)(1) lists specific categories of compensation that are “determined by the board to have been paid to enhance a member’s retirement benefit under that system.” Importantly, this clearly indicates that the KCERA Board has discretion to evaluate compensation types and make a determination. Of the three

subsections (A, B, C) under (b)(1), none can be said to describe the District's Cafeteria Pay. As explained by the District to KCERA, the District's Cafeteria Pay has been implemented for nearly 30 years and it has been paid regularly and equally to all of the District's employees. The payment of Cafeteria Pay was never intended to create an artificial enhancement in retirement benefit and, as shall be further discussed herein, the District and its employees have paid KCERA the necessary contributions to ensure that the Cafeteria Pay has been fully accounted for with respect to the pension system.

The *Alameda* decision does not state that Cafeteria Pay, as paid by the District, is not to be included in "compensation earnable." We understand that KCERA's staff have advised that the District's Cafeteria Pay (along with many other pay codes throughout the system's employer agencies) is currently improperly classified, but we do not concur with this advisement and we stress that the *Alameda* decision did not strip the KCERA Board of its authority. In fact, citing an earlier case on page 29 of its decision, the Supreme Court says that "...county retirement boards have the authority to interpret CERL's provisions as necessary to perform their administrative functions..." The Court then says that "they (the retirement boards) have no authority to adopt or act on an interpretation that is inconsistent with those provisions" and that "an administrative action that is unauthorized or inconsistent with governing legislation is invalid." We do not dispute the latter reminder of the retirement boards' limitations to follow the state statutes, but we want to make sure that the KCERA Board is not cowed by the responsibility to use its authority to make interpretations and decisions that are not clear cut.

The Association has been deluged by currently active employee members and by retirees that are potentially even more greatly impacted by this issue. We wish to call attention to the repercussions of KCERA's decisions with respect to the District's Cafeteria Pay. If KCERA plows ahead as planned, existing employees and retirees will be negatively impacted. For some retirees, this will result in a decrease in their pension income as high or higher than 10%. In absolute terms, the reduction in pension payments due to the elimination of Cafeteria Pay in the retirees' pensionable income calculation will be several hundreds of dollars a month. These individuals have already been actively posturing for a legal remedy to this loss in income and a suit against KCERA is likely. Existing Legacy employees will be harmed, especially if they are

near retirement. Depending on KCERA's decision and on the outcome of negotiations with the District, the Association's members have clearly expressed interest in exploring all legal options to ensure that all of their fellow employees are made whole. Suffice to say, the decision to reclassify the District's Cafeteria Pay will almost assuredly invite legal challenges based on the misinterpretation and implementation of the plain language of CERL's definition of "compensation earnable."

On the other hand, should KCERA take a less reflexive approach to the *Alameda* decision, KCERA might decide to not change the statute of the District's Cafeteria Pay. In that eventuality, what would be the risk and potential liability to KCERA? Legal counsel may point to the requirement that KCERA's Board has to follow CERL and court decisions interpreting the same. To that argument, the Association would argue that CERL and judicial decisions have not explicitly ruled on the District's Cafeteria Pay but have rather granted the KCERA Board with statutory authority to interpret CERL and make decisions in the best interests of KCERA's stakeholders. More pragmatically, where is the interest group waiting in the wings to sue KCERA should it decide to maintain the status quo on the District's Cafeteria Pay? Again, the Association is not arguing that KCERA violate the law, but simply to interpret the law on an issue that clearly has more than one reasonable interpretation.

Not only would KCERA's decision to leave the District's Cafeteria Pay as is be legally defensible, it would not create any harm whatsoever to anyone. No retiree would have their pension income reduced as a result. No existing employee would have their prospective pension income cut, leading them to possibly defer retirement. No employer agency belonging to KCERA would suffer as a result since the District (the only agency involved) has been paying its contribution for this compensation since the introduction of Cafeteria Pay. No taxpayer is going to be burdened by any tax or fee increases in order to pay for the continuation of the status quo since the employer and employee have been paying into KCERA for this compensation.

In fact, it is in the implementation of the proposed change in status for the District's Cafeteria Pay that numerous groups will be harmed. The retirees that will see their pensions cut are the most glaring and most sympathetic. The existing employees that are near retirement are

also potentially seriously impacted. KCERA and the District are also negatively impacted as they have to work through all of the potential contribution refunds and recalculations, as well as being subject to potential suits from the impacted retirees and employees.

Additionally, there is a real potential impact to the KCERA retirement system. Let's assume that the District's Cafeteria Pay is reclassified as non-pensionable. KCERA would then refund the contributions made by employees for this compensation type, removing those funds from the KCERA system. The District and Association will no doubt enter into negotiations to shift the compensation monies currently going into Cafeteria Pay and putting it towards a different compensation type. Perhaps the resolution is a Flex Pay model such as what Kern County has in place. Perhaps the two parties decide to simply do away with the Cafeteria Pay and put the monies into the base salary pay code. It is almost certain, however, that the end result will be that the employees will end up with a total compensation "earnable" that is at or very close to what they currently have. Should an employee retire a year after that change is implemented, he/she will have a retirement income equivalent to what they would have had if the reclassification of Cafeteria Pay had never taken place...BUT KCERA will have lost out on many years of contributions towards the pension plan due to the reclassification. Of course, employees that can postpone retirement a year or two would benefit the most. The worst off, of course, are the retirees that are slated to see a drop in their real retirement income at a time when they can least afford a reduction.

The Association understands the difficult position that KCERA's Board is in. We recognize the pressure of a Supreme Court decision and legal opinions that offer only binary options. The reality is that CERL was purposely written to give the retirement boards some discretion to make decisions that work for their stakeholders. The very spirit in which PEPR was adopted was to prevent public employees from spiking a member's pay in the final years of employment to spike retirement pension pay. Cafeteria Pay as it exists in the District, is a part of the base compensation of every employee in the District and has been paid for with employee and District contributions to KCERA from its inception. Additionally, the County of Kern Flex Plan (Code YY from the KCERA proposed *Alameda* Decision Pay Code Tracker, and as adopted by your Board at the September public hearing) by Kern County's own definition in its MOU(s)

is a “Cafeteria Plan” that your board is maintaining for Kern County Legacy employees. Not maintaining this for District employees would be an inconsistent interpretation and implementation of the *Alameda* decision.

The status quo with respect to the District’s Cafeteria Pay is not contrary to CERL, nor the *Alameda* decision, and it certainly is actually in the best interests of all KCERA stakeholders to continue as it stands. We strongly encourage you to consider these arguments and reconsider KCERA’s proposed position on the District’s Cafeteria Pay.

Just as importantly, the Association continues to request all relevant KCERA actuarial and contribution information for our current and retiree members impacted by these proposed changes. This would include details of all member and employer contributions, split out by compensation code. Additionally, as soon as KCERA has determined how it will handle reimbursement or collection of possible overpayments and/or excess contributions, the Association requests a detailed explanation of the calculations in order to cross check with the existing KCERA policy on overpayments and underpayments.

Thank you in advance for your time and close consideration of this matter.

Respectfully,

Rafael Ruano

Rafael Ruano
Goyette & Associates, Inc.
Counsel for San Joaquin Valley Air Pollution Control District Employee Association



ACCESS TO KCERA BOARD RECORDINGS

SEPTEMBER 30, 2020



FACTORS FOR CONSIDERATION

- Legal requirements
 - Brown Act & CERL
- Resources and space
 - Board Room & Virtual Environment
- Member/Public interest
- Value added vs. Cost/Risk incurred

LEGAL REQUIREMENTS

- Brown Act
- CERL
- Board/Committee/Staff charters or policies

BOARD MEETING CONFIGURATION - CURRENT

Current Status

- Zoom Video for Trustees/vendors/staff only
- Members/public dial-in by phone
- Board Meetings are recorded and audio files are available upon request to members/public, Trustees have direct access to audio file
- KCERA has YouTube channel and has posted educational videos and Board meetings related to *Alameda Decision*
- Summaries are posted to KCERA website once approved by the Board
- Current KCERA website can not handle large files
- No YouTube live stream

Possible Changes for Remote Meetings

- Zoom – video readily available (1-2 GB/meeting)
- Members/public dial-in by phone
- Board meetings are recorded and audio files are available upon request
- Upgrade capabilities of current website, rebuild website with more capacity
- YouTube live-stream option

BOARD MEETING CONFIGURATION - FUTURE

Current Status

- Zoom Video for Trustees/vendors/staff only
- Members/public dial-in by phone
- Board Meetings are recorded and audio files are available upon request to members/public, Trustees have direct access to audio file
- KCERA has YouTube channel and has posted educational videos and Board meetings related to *Alameda Decision*
- Summaries are posted to KCERA website once approved by the Board
- Current KCERA website can not handle large files (15MB)
- No YouTube live stream

Possible Changes for Live Meetings

- Live – Zoom component
- Members/Public dial-in by phone
- Rebuild KCERA website with greater capacity to house files. How much does that cost?
- Board Meetings – Record audio only or video too
- Load audio/video to KCERA YouTube channel after meeting
- YouTube Live-stream option

OPPORTUNITIES VS. COSTS & RISKS

Opportunities

- Increased access and transparency with members and the public
- Members can access meeting without having to physically attend the KCERA facility
- Members can benefit from educational presentations to the Board
- Members might become better investors in the 457 plan, increasing their retirement security
- We had nearly 300 people attend a Board meeting, an impossible feat in former live configuration

Cost & Risks

- Transparency may actually be reduced in some instances due to investment manager concerns or RFP status, for example
- Additional staff time to process large video files or pay vendor to handle on behalf of KCERA
- Constant maintenance and upkeep of files
- KCERA staff and Trustees could be under pressure to “play to the crowd” and lose focus on fiduciary duty

OTHER INFORMATION FOR CONSIDERATION

- How many downloads did we have when audio was on our website?
 - 78 for the 8/24/20 special meeting through 9/24/20
- How many page views so far on YouTube channel for Board meetings?
 - 47 for the 8/24/20 special meeting through 9/21/20
 - 34 for the A.M. & 47 for the P.M. session for 9/9/20 BOR meeting through 9/24/20
- How much have phone charges been so far on Zoom?
 - Phone charges \$1,074 through 9/15/20
- Logistics and cost involved in live video recording in Board room? Equipment, vendor, processing, hosting, etc.?
 - Equipment, processing, broadcasting, streaming, per County could be \$30k to get started
- Other Staff efforts regarding member outreach and education
 - SEIU Town Hall
 - YouTube educational content
 - Rebranding efforts
 - Webpage update and/or rebuild
 - New Employee Orientation changes

STAFF RECOMMENDATION

- Make permanent change to allow members/public to listen and participate in Board meetings live via telephone, whether on Zoom or live in-person
- Consider posting Zoom video and audio of future Board meetings on YouTube after the Board meeting
- Consider options to broadcast live video when meetings return to live in-person