

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER [X] Amended on 10/17/2018

DATE: 10/17/2018

TIME: 02:47:00 PM

DEPT: C-68

JUDICIAL OFFICER PRESIDING: Judith F. Hayes

CLERK: Calvin Beutler

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2018-00018879-CU-MC-CTL** CASE INIT.DATE: 04/17/2018

CASE TITLE: **County of San Diego vs San Diego County Employees Retirement Association**

[IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 10/11/18 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioner's Motion for Judgment on the Pleadings is GRANTED.

The Court denied Petitioner's Petition for Writ of Mandate because the County of San Diego did not meet its burden to affirmatively show Tier D is in fact a formula under Government Code section 31676.01. (Exhibit 4 to County of San Diego's ["County"] Request for Judicial Notice ["RJN"].) Defendant San Diego County Employees Retirement Association ("SDCERA") had argued that the County was required to obtain approval by the Legislature before SDCERA could implement Tier D. The Court found that a defined benefit formula under Government Code section 31676.01 could be deemed approved by the Legislature even though it existed prior to adoption of the Public Employees Pension Reform Act ("PEPRA"). This conclusion was based on the fact that Government Code section 7522.02, part of PEPRA, did not contain a temporal limitation on when the defined benefit formula must be approved by the Legislature.

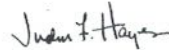
SDCERA's opposition to Petitioner's motion for judgment on the pleadings is essentially the same as previously made – the County must obtain approval from the Legislature as to all parts of the new defined benefit formula after the formula was created. SDCERA concedes that the age and years of service factors come from Government Code section 31676.01. SDCERA takes issue with the final compensation component of Tier D because it is capped by section 7522.10 of PEPRA. The County acknowledges that this cap will affect some of those subject to Tier D; however, the only issue in dispute between the parties is the purported need for approval by the Legislature. The fact Tier D is a modified version of the formula found in Government Code section 31676.01 by virtue of the fact Government Code section 7522.10 provides a cap on the final compensation component does not change the fact that the Legislature has already approved the final compensation component of Tier D by virtue of the fact it approved Government Code section 7522.10.

The Legislature has already approved the three components of the benefits formula in Tier D. The Legislature approved Government Code section 31676.01 and the parties agree Tier D contains the same age and years of service factors as Government Code section 31676.01. The Legislature also approved Government Code section 7522.10, which caps the final compensation component. As the difference between the Tier D formula and Government Code section 31676.01 is the limit imposed by Government Code section 7522.10, Tier D is an even lower risk and/or cost to the County than the formula under Government Code section 31676.01. Government Code section 7522.10 caps the number of the final compensation that can be used to calculate benefits. This cap limits the benefits to be paid to members.

This Court already found that Government Code section 7522.02 does not contain a temporal limitation on when the defined benefit formula must be approved by the Legislature. The County need not obtain approval by the Legislature as to Tier D because the Legislature already approved the formula by virtue of approving Government Code sections 7522.10 and 31676.01. Given the lack of temporal limitation on when the defined benefit formula must be approved, the Court has no choice but to find Tier D was approved by the Legislature.

The motion is granted.

The Court grants the County's Requests for Judicial Notice numbers 1-4. The remaining requests for judicial notice are denied.



Judge Judith F. Hayes