Case No. B326977

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SEVEN

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION,
Petitioner / Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES and BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES,
Defendants and Respondents.

[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS COUNTY OF LOS ANGELES AND BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES

On Appeal from the Los Angeles County Superior Court
Case No. 21STCP03475
The Honorable James C. Chalfant

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I. INTRODUCTION

For most retirement systems under the County Employees Retirement Law of 1937 (Gov. Code, §§ 31450-31899.10 ("CERL" or "37 Act"), the constitutional and statutory scheme provides for a balance between the retirement system and the counties. The Retirement Boards have sole authority over management and investments of the retirement system's funds and assets. The employees performing work for the retirement systems, however, are in most cases county employees, with the County Board of Supervisors having ultimate authority over salaries and other aspects of the civil service system to which these employees belong.

Despite this straightforward division of authority between the Retirement Boards and the Boards of Supervisors, which has been confirmed by case law for two decades, Appellant Los Angeles County Employees Retirement System ("LACERA") takes the position that the Board of Supervisors plays merely an administrative role in approving by ordinance whatever civil service positions and salaries are requested by a retirement board. In essence, LACERA asserts that the authority to set salaries for county employees working for a retirement association has been delegated to the retirement boards and the Board of Supervisors has simply a pro forma role. This position is in error. The courts have been quite clear that the Board of Supervisors has plenary authority over the salaries of counties employees and that such authority cannot be delegated to another entity.

The applicable statutes designate the employees at issue in this case as Los Angeles County employees, and thereby give the County's Board of Supervisors the authority to classify them and set their salaries. That role must mean something beyond a rubber stamp of any salary and position

requests submitted to it by a retirement system. LACERA and its supporting amicus curiae may have policy concerns with this division of authority, but that is an issue for the Legislature, not the courts, to resolve.

Indeed, as explained in Respondent's ("LA County") brief and more fully described below, the Legislature has acted to change the structure for four retirement associations so that some or all of their staff are employees of the retirement associations and not the county. These changes were specifically intended to give those four CERL retirement systems control over staff salaries. An effort to make a similar change for all 37 Act retirement systems was vetoed by the Governor. This is clear evidence of the legislative intent that the salary of these county employees is determined by the Board of Supervisors.

Generally, this is a process that creates balance and works well. In practical terms, it results in something of a meet-and-confer process where the needs of both the retirement system and the county are considered, with the Board of Supervisors having the ultimate decision-making authority, as required by the California Constitution. This process plays out regularly across the State and should not be upended here simply because LACERA is disappointed that some of its requests in this instance were not granted by LA County.

Rather than obtaining legislation to convert the employees at issue to LACERA employees, as other retirement systems have done, LACERA remarkably asks this Court to find that a case decided twenty years ago is erroneous and overbroad and adopt a ruling that would unconstitutionally infringe on the nondelegable authority of the Board of Supervisors to set salaries for its employees. To avoid the constitutional conflicts LACERA's position would create, this Court should decline that invitation.

For these reasons, Amicus Curiae CSAC urges this Court to affirm the trial court ruling below denying LACERA's Petition for Writ of Mandate and hold that LA County acted properly in setting salaries for the county employees performing work for LACERA.

II. ARGUMENT

A. County Boards of Supervisors have plenary authority over compensation for county employees that cannot be delegated.

All parties in this action agree that the individuals who work at LACERA are County employees. (Gov. Code, §§ 31522.1, 31522.2, 31522.3.) Section 1(b) of article XI of the California Constitution gives the governing body of each California county the plenary authority to provide for the compensation of county employees. The provision reads:

> The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. **The governing body shall provide for the number, compensation, tenure, and appointment of employees**.

(Cal. Cont., art. XI § 1(b) ("Section 1(b)" (emphasis added).)

For charter counties, like LA County, the Constitution requires that the charter provide for: "The **fixing and regulation by governing bodies**, by ordinance, **of the appointment and number of** assistants, deputies, clerks, attachés, and other **persons to be employed**, and for the **prescribing** and regulating **by such bodies of** the powers, duties, qualifications, and **compensation** of such

persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal." (Cal. Const., art. XI §4(f) (emphasis added).)

The courts have found that the Board of Supervisors has plenary authority over county employee compensation. (*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322; *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.) In these cases, the courts reviewed State legislative efforts to require mandatory interest arbitration after a county and bargaining unit reached impasse. In both cases, the court concluded that such attempts at legislative interference were impermissible because of the Board of Supervisors' exclusive authority over employee compensation. (*Ibid.*)

Plenary authority in the Board of Supervisors over employee compensation should similarly be found in this case. LACERA relies on the language of Government Code section 31522.1 as authority that it has salary setting authority. Even if this were an accurate interpretation of the statute, which it is not, the statute itself would be unconstitutional.

First, as the California Supreme Court noted, the history of Section 1(b) shows the voters' intent to vest control over compensation with the "Board of Supervisors." (*County of Riverside, supra*, 30 Cal.4th at pp. 285-286.) Specifically, the Supreme Court found that Section 1(b)'s predecessor, the former article XI, section 5, was amended in 1933 to "transfer control over compensation of most county employees and officers from the Legislature to the *boards of supervisors.*" (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 772 (emphasis added).) "According to the Supreme Court, the purpose of the 1933

amendment was 'to give greater local autonomy to the setting of salaries for county officers and employees, removing that function from the centralized control of the Legislature.' Thus, under section 1, subdivision (b) 'the county, not the state, *not someone else,* shall provide for the compensation of its employees.' " (*County of Sonoma, supra,* 173 Cal.App.4th at p. 338, citing *County of Riverside, supra,* 30 Cal.4th at p. 285, (emphasis added).) If this is true for general law counties, like Sonoma and Riverside, it is undoubtedly true for a charter county like Los Angeles, which, contrary to LACERA's delegation arguments (Opening Br., pp. 54-44), has constitutional authority to "prescribe" (rather than "provide") for the compensation of county employees.

Indeed, the ballot argument in favor of the 1933 amendment made clear that the measure "'gives the board *complete authority* over the number, method of appointment, terms of office and employment, and compensation of all deputies, assistants, and employees.'" (*County of Riverside, supra,* 30 Cal.4th at p. 286, citing Ballot Pamp., Special Elec. (June 27, 1933) argument in favor of Prop. 8, p. 10 (italics in original).) Thus, the history of the constitutional provision shows that the public understood the term "governing body" for purposes of setting employee compensation to mean the Board of Supervisors, and the initiative power may therefore not be used to set compensation.

The statutory provision implementing Section 1(b) is Government Code section 25300. This section states: "*The board of supervisors* shall prescribe the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees…." (Gov. Code, § 25300 (emphasis added).) As noted by numerous courts, the specific reference to "board of supervisors"

rather than a generic reference to a legislative body is strong evidence of exclusive delegation. (*Committee of Seven Thousand v. Superior Court (1988)* 45 Cal.3d 491, 512; *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 373; *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 834; *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 242; *City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.* (2003) 113 Cal.App.4th 465, 476.)

The fact that LA County appoints some members to the retirement boards and thus has "a say in who will have paramount fiduciary duties to the system" (Opening Br., p. 17) is not a sufficient replacement for the ultimate authority of the Board of Supervisors. The Board of Supervisors, and the Board alone, sets county employee compensation. That authority cannot be delegated by statute to the retirement boards, leaving the Board of Supervisors with no power to determine salaries, but only a ministerial obligation to adopt what has already been approved.

LACERA's reading of the relevant statutes as requiring the Board of Supervisors to approve a salary ordinance put forward by LACERA as a ministerial act would impermissibly delegate salary setting authority of county employees to a body other than the Board of Supervisors and would be unconstitutional. As LACERA itself argues, this Court has an obligation to interpret statutes to avoid unconstitutional results. (Opening Br., p. 55, citing *People v. Garcia* (2017) 2 Cal.5th 792, 804. *See Younger v. Superior Court* (1978) 21 Cal.3d 102, 113.) Yet LACERA's argument creates a constitutional avoidance problem by usurping the constitutional authority of the Board of Supervisors to set salaries and unconstitutionally delegating that authority to LACERA. LA County's interpretation of the statutory and

constitutional provisions to provide the County with ultimate authority over county employee salaries harmonizes the law to avoid constitutional concerns. (*See People v. Barasa* (2002) 103 Cal.App.4th 287, 292 [courts should not reach constitutional questions unless absolutely required to do so].)

Nothing in article XVI, section 17 of the California Constitution changes this analysis. As the courts have previously determined, "[t]he primary purposes of article XVI, section 17 are to grant retirement boards the sole and exclusive power over the management and investment of public pension funds and to ensure that the assets of public pension systems are used to provide benefits and services to participants. (*Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095, 1099-1100.) Thus, "the 'plenary authority' that is granted over the 'administration of the system' goes to the management of the assets and their delivery to members and beneficiaries of the system, not to the remuneration of those who administer it." (*Id**Error! Bookmark not defined.***. at p. 1110.)

Both the history of Section 1(b) and its implementing legislation demonstrate an intent to exclusively delegate the authority to set employee compensation to the Board of Supervisors, and this Court should rule accordingly.

B. The history of the Legislature's actions on this issue shows a clear intent that Boards of Supervisors have authority to set the salaries for county employees working for retirement systems.

There is no better evidence that the Board of Supervisors has the authority to set retirement association staff salaries than the special exceptions that have been granted to four retirement associations to designate staff as employees of the retirement association rather than the

county. (See Gov. Code, § 31522.5 [San Bernardino County retirement system senior staff are employees of the retirement system and not the County]; Gov. Code, § 31522.11 [same for the Orange County retirement system]; Gov. Code, § 31522.10 [same for Ventura County]; Gov. Code, § 31522.9 [an even broader exemption for Contra Costa County retirement system, specifying that all staff, not just senior level staff, are employees of the retirement system and not the county].) It is a long-standing rule of statutory interpretation that "where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195; *Burgos v. Superior Court* (2012) 206 Cal.App.4th 817, 837.)

There would have been no need for these statutory exemptions if the then-existing statutes already allowed the retirement boards to determine the salaries for these employees, and the Board of Supervisors had merely a ministerial duty to approve – unchanged – whatever was submitted to them. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 935 ["When the Legislature amends a statute, we will not presume lightly that it 'engaged in an idle act'"].) Indeed, the legislative history of the adoption of the exemptions supports the understanding that they were created specifically to allow the retirement boards ultimate authority over salaries so they could have the flexibility needed to recruit and retain specially trained professionals. (See, e.g., Assem. Floor Analysis, 3d reading analysis of Assem. Bill No. 1992 (2001-2002 Reg. Sess.), 2002, par. 5[1]; Sen. Com. on Pub. Employment and Retirement, Analysis of Sen. Bill No. 1291 (2015-2016 Reg. Sess.) as

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[1] Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200120020AB1992#

amended May 27, 2015, par. 3[2] [noting that making the retirement association the employer was done for "purposes of determining [the employees'] compensation and benefits"].)

Another legislative effort underscoring the general rule that the Board of Supervisors controls county employee salaries, including those who work for retirement associations, is AB 1853 (2016). That bill would have allowed retirement staff to be employees of the retirement system in all 37 Act counties, acknowledging that impetus for the bill was to eliminate the current process, which leaves the ultimate control over staff structure and compensation to the Board of Supervisors. (See Assem. Floor Analysis, Concurrence in Senate Amendments of Assem. Bill No. 1853 (2015-2016 Reg. Sess.) as amended June 20, 2016, par. 5.[3]) Governor Brown ultimately vetoed AB 1853, concluding that it was too far-reaching, and that any instances of removing Board of Supervisors authority over the salaries of retirement system personnel should only be by agreement between the county and the retirement system. "This more collaborative approach better serves the public interest." (Governor's veto message to Assem. on Assem. Bill No. 1853 (Sept. 23, 2016) Recess J. No. 15 (2015-2016 Reg. Sess.) p. 6632.)[4] This unsuccessful attempt to amend the law is relevant to understanding the current law's meaning. (*Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 761 ["the legislative

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[2] Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1291#

[3] Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1853#

[4] Available at: https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/AB_1853_Veto_Message.pdf

history surrounding the unsuccessful attempts to address the issue of gradual earth movements does offer some guidance to our interpretation of the Cullen Act"].)

If the role of the Board of Supervisors is merely to approve, without changes, any staffing and salary requests submitted by the retirement association, there would be no need for any of these legislative acts. The retirement boards could simply create positions and set salaries for those positions, and then submit an ordinance to the Board of Supervisors to "rubber stamp" it. The fact that some retirement boards have been exempted from the need to defer to Board of Supervisors salary authority, and that an effort to allow all to do the same was rejected, clearly establishes the intent of the statutes applicable to this case to vest the Board of Supervisors with authority regarding compensation.

C. The statutory scheme provides for coordination, balance and accountability in retirement system staffing and compensation.

The process for employee classification and compensation is designed so that counties and retirement systems must work together through a meet-and-confer process prior to presentation to the Board of Supervisors. The "take it or leave it" approach sought by LACERA would undermine this process. For this reason, CSAC opposed AB 1853, over concerns about the lack of review or oversight by the county Board of Supervisors regarding the hiring, pay and benefits of employees and the increase in system administrative costs that would be incurred by the county.

Indeed, both sides have a vested interest in effective administration of the retirement system, and any disputes in classification or compensation

are usually resolved in a manner that meets the needs of both organizations. This cooperative process works well for ensuring that retirement system staff are classified and compensated on par with other county staff, while allowing retirement boards to carry out their fiduciary duties to the retirement system.

In any event, regardless of how one views the relative merits of this cooperative system, it is the policy determination made by the Legislature. The Legislature has made exceptions for individual retirement systems, making clear that in those systems only, certain staff are employees of the retirement system rather than county employees. However, the Legislature has not done so here, and so long as these employees remain county employees, the constitution requires that the Board of Supervisors retain plenary authority over their compensation.

III. CONCLUSION

For all these reasons, Amicus Curiae CSAC urge this Court affirm the trial court ruling denying the Petition for Writ of Mandate and find that the Board of Supervisors has authority to set compensation for all county employees, including those performing work for LACERA.

Dated: December 21, 2023

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 2,893 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of December, 2023 in Sacramento, California.

Respectfully submitted,

/s/ *Jennifer B. Henning*
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