



# Nossaman Comment on Recent Court of Appeal Decision re Constitutionality of PEPR

02.02.2015 | By [Ashley K. Dunning](#)

Much has been made of the recent Court of Appeal decision resolving a challenge to the Public Employees' Pension Reform Act of 2013 (PEPRA), *Deputy Sheriffs' Assn. of San Diego County v. County of San Diego* (Jan. 22, 2015, 4th App. Dist., Div. 1, D065364).

The upshot of the case, however, is that the Court upheld both the PEPRA benefit reductions and the contribution increases for new hires as written in the statute. The issue raised by the case was the applicability of the PEPRA provisions to new members hired by the County on or after the effective date of the PEPRA statute, January 1, 2013, but before the applicable MOU containing a higher benefit formula for members and a higher contribution cost sharing provision for employers had expired on June 26, 2014. The Deputy Sheriffs' Association contended that the new members covered by the pre-existing MOU had a constitutionally protected right to have the higher MOU benefit and lower required employee contribution provisions applied to new members hired before that MOU expired.

With respect to benefits, the Court of Appeal concluded that the prospective new members who had not been hired before the effective date of the statute had no constitutionally protected right to the continuation of the higher benefit formula in the MOU once the Legislature had eliminated the statutory availability of that benefit for new hires, accepting prior case law that "... where, as here, a collective bargaining agreement incorporates statutorily available retirement plan options and the Legislature has not restricted itself from later changing the options, then subsequent changes applicable only to prospective employees do not violate the contract clause." (Emphasis added.) Accordingly, the Court of Appeal concluded that the lower PEPRA statutory benefit formula could override the terms of the pre-existing MOU for new members hired after the effective date of the statutory change.

With regard to the application of the PEPRA 50/50 percent normal cost contribution split, PEPRA (and hence the Legislature itself) deferred to existing MOU contribution split provisions in pre-existing MOUs "until the

expiration of that contract." See Gov. Code section 7522.30(f). San Diego County, and then the trial court, had not recognized that built-in statutory delay, but had upheld the application of the 50/50 split immediately as of the effective date of the statute. The Court of Appeal correctly recognized that it had no need to determine whether or not the constitutional protection for pre-existing vested contract rights based upon the MOU overrode the statute's 50/50 contribution split provision, where the PEPRAs statute itself expressly deferred to such pre-existing MOU contract contribution split provisions until the contract's expiration. Accordingly, the Court of Appeal remanded the case back to the trial court to apply the PEPRAs contribution split provision as written with the delay, not as it had been misconstrued as being immediately applicable.

**Comment:** Although the Court of Appeal had no need to, and did not, decide whether PEPRAs contribution split provision would have been unconstitutional if it had been made immediately applicable to new members, it is difficult to believe that the Court would have given the MOU contribution provisions greater constitutional protection than it was willing to extend to the MOU benefit provisions it found immediately subject to the PEPRAs reductions for new members.