

**Approved Minutes  
Meeting of the  
AC TRANSIT RETIREMENT BOARD  
November 5, 2021**

**ROLL CALL**

Chair Jeffrey Lewis called the meeting to order at 11:10 a.m.

Members Present: None  
Present by Zoom: Chair Jeffrey Lewis, Vice Chair Josette Moss, Davis Riemer, Chris Andrichak  
Members Absent: Robert Coleman

Also present by Zoom: Hugo Wildmann, Retirement System Manager; Russell Richeda, Legal Counsel; Jason Herron, Retirement System Administrator; Bertina Ng, Retirement System Analyst; Curtis Lim, Temporary Retirement Staff; Cris Gille Retirement System Associate Analyst. The following attendees attended all or part of Open Session: Christian Peeples, District Board Liaison; Jill Sprague, General Counsel; Cyril Espanol, Journalist

**PUBLIC COMMENTS**

None

Hugo began the meeting by reporting that Robert Coleman would be absent due to a family emergency.

**CONSENT CALENDAR**

- A. Approval of Minutes for the October 6<sup>th</sup> Meeting
- B. Approval of Minutes for the October 6<sup>th</sup> Joint Meeting with The District Board

**MOTION: Andrichak/Riemer** to approve the Consent Calendar (4-0-0-1).

**REGULAR CALENDAR**

- C. Update on COVID-19 District and Department Activity

Hugo reported that the District had scheduled two town hall meetings to discuss the plan for returning to work but both of those meetings had been postponed. He thought it seemed safe to say that the planned return to office for November 15<sup>th</sup> would no longer occur.

D. AB 361

Hugo reminded the Board that it is now obligated to adopt a resolution every 30 days that meetings should still take place remotely. This special meeting was necessary because the October and November regular meetings were scheduled more than 30 days apart. Hugo reported having a conversation with District safety Manager Tabby Davenport who recommended that Board meetings be held remotely if possible. Hugo noted that the Board Packet contains a short memo and a resolution that he hoped the Board would adopt, allowing the Board to meet remotely until the November 18<sup>th</sup> Board meeting, at which time another resolution could be adopted, if necessary, for December. The Board recommended a small spelling correction to this and future resolutions.

**MOTION: Riemer/Moss** to approve the adoption of the resolution pertaining to AB361.  
(4-0-0-1)

E. PEPRA Plan Amendment and Presentation on Transitional Issues

Hugo reminded the Board that at its October 6<sup>th</sup> meeting, the Board had accepted the first two of three memos from Russ regarding the PEPRA Plan amendment for Represented employees. The first two memos covered District Board Policy 665, the policy for amending the Retirement Plan, and legal interpretations of PEPRA and its effects on the Plan.

The third memo for discussion at this meeting covers changes to the interpretation of PEPRA by the retirement system, Russ, and the District Counsel. Russ created a PowerPoint presentation to help guide the Board through his memo.

Russ began his presentation noting that the interpretations of PEPRA had been brought to the Board previously, and he was now asking for those interpretations to be changed. In bringing these interpretations to the Board while the amendment is still pending, he hopes that future staff and counsel can invoke the rule of contemporaneous construction to assist in upholding interpretations in the event of questions pertaining to the proper interpretation of the amendment. Russ stated that his comments today and his memo all assume the District Board adopts the proposed amendment.

Russ introduced the idea of “Half PEPRA”, since the prohibition on retroactive benefit enhancements, reinstatement from retirement, and felony forfeitures apply to all employees regardless of hire date. It may be easier to think of some employees as “Half PEPRA” since only one of the two main provisions in the law applies to them. He noted that the first request for Board affirmation is for the interpretation that “Transferring to a position subject to a benefit formula with a lower retirement age is not a benefit enhancement”.

Russ then described the relevant provisions of section 13.3 of article XIII which applies to employees hired after the operative date, making them “Full PEPRA” in that all provisions of PEPRA apply to them. He reported the operative date for unrepresented employees as January 1, 2016 and January 1, 2020 for represented employees.

Additional conclusions presented included that an employee remains “Half PEPRA” even if they leave AC Transit and return after the operative date. “Half PEPRA” employees never make employee contributions.

Russ then presented a scenario in which an employee was hired prior to the operative date, transferred to a bargaining unit with a more generous formula, and then to an unrepresented position. The new interpretation for Board adoption has the years of service calculated at the formula for the corresponding bargaining unit while the employee is in that bargaining unit and then at the 2.75% formula for the unrepresented time.

Other conclusions included that an unrepresented employee hired after 1/1/16 is Full PEPRA. A represented employee hired after 1/1/20 is Full PEPRA

Russ then presented 3 fact situations in which the Board was asked to make a PEPRA interpretation:

1. Hired as an AFSCME employee **BEFORE** 1/1/16 and transfers to an unrepresented position **BEFORE** 1/1/20

**Original Interpretation:** AFSCME formula for AFSCME Service, 2.75% Unrep formula for Unrep service.

**Revised Interpretation:** 2.5% at 55 Unrepresented Formula for AFSCME Years of Service and 2.75% at 55 unrepresented formula for unrepresented Years of Service.

This conclusion is based upon a reading of section 13.2(a) that we look at the situation on the day prior to the transfer, and, at that time, the amendment for represented employees was not in effect.

2. Hired in an ATU position **AFTER** 1/1/16 and transfers to an AFSCME position **BEFORE** 1/1/20

**Original Interpretation:** ATU formula for ATU Years of Service; AFSCME formula for AFSCME Years of Service

**Revised Interpretation:** AFSCME formula for both ATU Years of Service and AFSCME Years of Service.

This conclusion is based upon a reading of section 13.2(a) that it does not apply to changes in classification from one represented position to another represented position that occur before the operative date of the amendment for represented employees.

3. Hired in an AFSCME position **AFTER** 1/1/16 and transfers to an unrepresented position **BEFORE** 1/1/20

**Original Interpretation:** AFSCME formula for AFSCME Years of Service and PEPRA formula for unrepresented Years of Service. Employee makes contributions for unrepresented Years of Service.

**Revised Interpretation:** No employee contributions due, 2.5% at 55 unrepresented formula for AFSCME Years of Service and 2.75% at 55 unrepresented formula for unrepresented Years of Service.

This conclusion is based upon a reading of section 13.2(a) that we look at the situation on the day prior to the transfer, and, at that time, the amendment for represented employees was not in effect.

The Board discussed the implications of hire date and noted that, if employees are hired as classic or “Half PEPRA”, then they’ll never be “Full PEPRA” employees. The Board also discussed whether classic employees who leave and come back will not be required to make contributions.

Hugo noted that if the Board adopts these interpretations, benefit statements can be sent out this year, calculated according to the new interpretations, and that employees who made contributions that they should not have under the new interpretation will need to have their contributions returned.

The Board noted that each of the revised interpretations is more favorable to employees and, since the law is ambiguous about things, interpretations of ambiguous law should favor the participant.

**MOTION: Riemer/Moss** to adopt the conclusions set forth in Russ’ presentation, and adopt the revised interpretations. (4-0-0-1).

#### F. PEPRA Implementation

Hugo Reported that the PEPRA amendment would go before the District Board on December 10<sup>th</sup>, that the District and AFSCME and IBEW still needed to agree to pay codes for the amendment, and that ATU and the District have reached agreement. The Amendment includes language about collecting contributions within 60 days of adoption of the Amendment.

#### G. Benefit Statements

Hugo reported that Benefits Statements calculated with the new plan interpretations in mind were ready to be sent, but that a communication plan with those affected, especially those with contributions to be returned, was being worked out. Hugo noted that he would work with the District and outside tax counsel to return these contributions.

#### H. Adjournment

The meeting was adjourned at 12:20