

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE  
TENTATIVE RULINGS - July 16, 2009**

EVENT DATE: 09/18/2009      EVENT TIME: 10:30:00 AM      DEPT.: C-68

JUDICIAL OFFICER: Judith F. Hayes

CASE NO.: 37-2009-00081659-CU-WM-CTL

CASE TITLE: SAN DIEGO POLICE OFFICERS ASSOCIATION VS. CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 03/19/2009

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The Demurrer of Defendant City of San Diego is SUSTAINED, with ten days leave to amend. The Court finds Plaintiffs' complaint makes allegations that require compliance with the Government Claims Act. (*Canova v. Trustees of the Imperial Irrigation District Employee Pension Plan* (2007) 150 Cal.App.4<sup>th</sup> 1487)

Plaintiffs' claims challenge the City's decision to change the Earnings Code Document to exclude motorcycle care pay and canine care pay from base compensation for the purpose of determining a member's retirement allowances. (Complaint, para. 19) Plaintiffs allege such action "substantially" reduces the their pensions. (*Id.*) Plaintiffs seek an order invalidating the City's decision to change Earnings Code Document. Plaintiffs specifically request that the Court issue a peremptory writ of mandate "directing the City to immediately amend the 2007 Earnings Code Documents to include Motorcycle Care Pay and Canine Care Pay in Base Compensation to the San Diego City Employees' Retirement System." (Complaint, para. 31) Plaintiffs conclude that if the action is successful, they would enforce an important right affecting the public interest, and confer "significant benefits, pecuniary and nonpecuniary" on a large class of persons.

In *Canova* employees of Imperial Irrigation District sought to invalidate the District's changes to their retirement benefits specifically a rate amendment and an equity adjustment. In their prayer for relief, employees requested the rate amendment be invalidated, the equity adjustment be recalculated and appropriate transfers be made into employees' plan accounts. (*Canova, supra* at 1493) The trial court granted summary judgment for employees' failure to file a claim because "the action was primarily for one for damages and even assuming Plaintiffs were entitled to equitable relief, the only result would be a present payment of money for plaintiffs' direct benefit." (*Id.*) The Court of Appeal affirmed the trial court.

Here, the same is true. If the Court grants the relief sought by plaintiffs here, the City will be required to pay plaintiffs' members money constituting an increase in their pension benefits. As in *Canova*, the primary purpose of plaintiffs' complaint is for money damages and therefore, plaintiffs were required to comply with the Government Claims Act. (*Canova, supra* at 1493) Although plaintiffs styled their complaint as a mandamus and they complain the City failed to negotiate the changes in the Earnings Code Document, the thrust of the action is to recover the inclusion of motorcycle care pay and canine

care pay into base compensation for purposes of calculating higher pension benefits. Plaintiffs do not seek to compel a mandatory duty, statutory duty, or ministerial act – they indeed seek to invalidate the City's decision to delete motorcycle care pay and canine care pay from base compensation which decreased members' pension benefits. (See *Canova, supra* at 1493 [In contrast, mandamus actions seeking to compel performance of a mandatory duty, statutory duty, or ministerial act may not be subject to the Claims Act if they do not seek money or damages].)

Thus the demurrer is sustained and the Court grants plaintiffs ten days leave to amend.