

Santa Monica Municipal Employees Association April 2011 News

Contract Negotiations Kick Off this Month

Last month, our Association Board and professional rep, Brian Niehaus, met with SMMEA members to talk about upcoming negotiations. Thank you to everyone who participated and filled out the survey. Your input is valuable as we put together this year's bargaining proposals. If anyone has not yet filled out a survey, or you want to add any other suggestions, please contact your board rep.

As we discussed at the meeting, the City claims that its finances are seriously "stressed," so we expect this to be a difficult bargaining season. Our initial proposal will be more modest than in previous years. Please be thinking about suggestions we may give to City Management and the Council about ways that the City may save money or generate additional revenues.

Next month we will be able to publish our completed bargaining proposal. In the meantime, thanks you for your support. Please talk to any member of the Board for more detailed information.

In Times Like These, Why Bargain at All?

By Robin Nahin, CEA Staff

Only a few years ago, when your Association sat down with the City to negotiate a new MOU, you looked forward to some positive changes. The economy may not have been great, but you ALWAYS got a cost-of-living raise, and no one EVER said you had to pay for your own retirement plan. Today,



however, bargaining is almost all bad. Whether your City is really broke, or just responding to vague “political pressure,” MOU negotiations are likely to be your City’s opportunity to implement “takeaways.”

In fact, it’s become obvious to experienced professionals in this field that the best outcome of bargaining, for most public employees, since 2009, is NO bargaining at all. Associations that are in the middle of long contracts are better off than groups whose contracts are expiring. Those with expiring contracts are best off negotiating the longest extensions possible...

Unfortunately, public agencies in California have become increasingly aggressive in pushing for shorter and shorter contracts. The majority of city employees in California are now living with one-year agreements – which allow the employers to plunder for more next year. Managers at public agencies are becoming increasingly adept at threatening “impasse” or “layoffs” in order to accomplish their “last, best offers.”

So, what IS the best strategy for addressing the bargaining process during these “takeaway times?” To carry it further, what’s the value of your Employees Association *at all* during times like these? Is your union obsolete or more desperately needed than ever? Here are some thoughts:

The Function of a Contract



First of all, please understand the importance of a Union Contract. Your Contract – your MOU – establishes “wages, hours and conditions of employment” which your

employer **MUST** honor, as long as it is in force. If the City violates your Contract, you may use the grievance process or, ultimately, go to the Public Employment Relations Board for enforcement. The City **cannot** simply reduce your pay or benefits (or any other aspect of your job) whenever it wishes.

Your Union (yes, your Association IS a union) is the “keeper” of your Contract. It has both the right and the *responsibility* to enforce it on behalf of all members. If you had no union, you would have no guaranteed pay levels or benefits at all.

In the public sector in California, the provisions of an MOU “remain in force until a successor Agreement is either agreed upon or imposed.” This means that even if the Contract expires, its remains in effect until both sides either

negotiate a new one, or they negotiate to impasse

– after which your employer may implement its “last, best offer.”

So your Association’s most important function (especially during bad times) is to enforce - ***and do its best to hold onto*** - the best possible contract. Contracts can be eroded when you are overwhelmed by other issues; enforcement means making sure that the members know the MOU, and have decided how to respond, *as a group*, if the City begins trying to weaken it. In plain English, this means that if the City asks for “give backs” or pay or benefits, mid-contract, you agree on the response.

To “hold onto the best possible contract,” *this year*, might simply mean not to agree to any losses. When your MOU expires the best strategy might be a simple multi-year extension – ***or NO bargaining at all.***



CAN YOU REFUSE TO BARGAIN?

But what if the employer won’t agree to an extension, or to a delay in negotiations? What if they really **MUST** deal with financial problems, or **MUST** respond to Council orders to cut benefits? Can the City **COMPEL** the union to negotiate?

The answer is yes: public sector unions can't legally refuse to bargain (although they may try mightily, and often get away with this for a long time.) If the MOU is expiring and the Association refuses, point blank, to "come to the table," the City may not only file an unfair bargaining complaint with PERB, but after reasonable effort to negotiate, it may declare impasse and impose its "last, best (takeaway) offer."

So, what can your Association do when it has no choice but to bargain, and it knows that the City will be proposing negative changes to the status quo? **There is only one answer: bargain really hard, and really carefully.** Skilled negotiators and a cautious, intelligent, mutually supportive bargaining team are essential; you will now be engaging in some serious discussion.

The goal of that discussion is two-fold (1) to persuade the City that it must MITIGATE the threatened "takeaways" (in exchange for your members' non-combative agreement to the new Contract) and (2) to insure that **ALL employees** in the City **"share equally in the pain."**

What do we mean by mitigating losses? This means that if Management's orders are to reduce the cost of your bargaining unit by 10%, your team's goals are to cut those losses down to 3% or 4% AND channel them in directions that are most acceptable to your members. For example, "golden handshakes" (retirement incentives) can be a "win-win:" significantly reducing the cost of labor AND allowing some members to retire early – with a little help. Similarly, furloughs are a much less "painful" takeaway than pay or benefit reductions. Not only are they temporary, but they give employees some time off.

EQUITY ACROSS BARGAINING UNITS

Making sure that the City's financial problems are felt equally across **all** units is an essential goal of a skilled bargaining team. There is no acceptable excuse for the City to try to force "takeaways" on their general employees, while the Police or Fire or top management experience no losses. **This really IS about standard of living for us ALL....**

CONCESSIONS MUST GO BOTH WAYS!

If your MOU is expiring and your Union is facing strong pressure to make concessions, this is your opportunity to INSIST on concessions in other areas of the contract. This might be your opportunity to clean up some long-festering "justice" issues. For example: do you need a fair system for rotating overtime opportunities? Some release time for your Board to conduct union business? A decent grievance procedure? Have you may have been pressing for years for the right to go before an arbitrator in the case of major discipline? Or the right to appeal negative performance reviews? Better in-house promotional ladders? Now is the time to bring these ideas up. Most employers would rather negotiate (and concede) on a non-economic issues than force you into impasse for a "takeaway contract." As bad as times are, most Managers would still prefer "cooperative" labor relations (which means a mutually agree-upon MOU) than several months of conflict and legal-bashing.



WHAT IF YOUR CITY DOESN'T CARE?

But, what if you happen to work in one of those agencies where Management DOESN'T care about fair or cooperative relations? Then, here's what you should know about the law: ***even if your City is bordering on bankruptcy, they cannot "force open" your contract without bargaining.*** If this happens, your Association can go to PERB and have any losses restored. Second, if you engage in bargaining, but the City is not reasonable (meaning, it will not discuss mitigating your losses or channeling them to try to meet your members' needs; or they will not agree to treat the bargaining group equally) **you do NOT have to agree on a new MOU.** You CAN force the City to go through the Impasse Procedure. You CAN go directly to the Council to explain why your position is reasonable, and Management's is not. You CAN go to

the media. You can even consider a direct work action and a PERB claim over unfair bargaining. *You can make the workplace as unpleasant for them as they are making it for you...*

Most employers bargain with their employees respectfully, even during bad times.

This is not only because they generally respect you – and work with you, but because then because they need your daily enthusiasm and

cooperation. When respect and cooperation break down, however, Associations do have the right to use any tools at their disposal... It is your bargaining team's obligation to make this clear...

EMPLOYERS HAVE LEGAL OBLIGATION TO PROVIDE SAFE AND HEALTHY WORKPLACE

Twenty percent of all violent crime in the United States occurs in the workplace. An estimated 1.7 million employees are injured each year because of workplace assaults. A recent survey of employers by the Department of Labor disclosed that more than 50% of all employees had experienced at least one incident of workplace violence during the preceding year. One out of three reported that he or she has been bullied on the job.

Employers recognize they have a legal obligation to provide their employees with a safe environment in which to work. In most people's minds, this means minimizing employees' exposure to dangerous work-related processes, machinery, or environmental risks in the field. However, the legal obligation to provide a safe work environment also includes minimizing the risk that employees will be victims of workplace violence. One way to do this is to make everyone aware of the "early indicators" of a potentially violent co-worker.



Precursors to Violence...

People develop a propensity to violent behavior for a myriad of different reasons. Pressure at work, family conflicts, financial adversity or other pressures can play a role in "pushing someone over the edge. Discipline or termination can make someone who already believes that he is being mistreated potentially violent. We have all heard about the employee in Costa Mesa who killed himself by jumping off City Hall after he received a layoff notice.

Co-workers are often the first people to notice changes in behavior, which could be precursors to violence. These include:

- Direct or implied verbal threats about co-workers, management, customers, or family members
- Escalating irritable or threatening behavior or gestures
- Comments about weapons, fascination with weapons, bringing weapons to the workplace
- Paranoid-sounding comments or over-reaction to coaching, discipline, or criticism
- Apparent depression, delusional behavior, and/or talk about suicide
- Talk about past violent behavior
- Lack of concern for normal safety precautions; dangerous driving or "road rage."
- Unreasonable romantic or obsessive interest in another employee; stalking behavior.

If you believe that a co-worker is making comments or demonstrating behaviors such as these, it is legal and appropriate to report this to Management. We are living in difficult times. It is better to be overly cautious than not cautious – and not caring – enough.

Excessive Absence... Or Not? Your "Right" To Use Sick Leave



Since the mid-'90s the Family Medical Leave Act has protected seriously ill or injured workers from being fired – at least for a period of time. However, the law is much less clear about whether your employer can take other threatening “actions” against you for “excessive absenteeism.” In fact, it’s common for people who use a lot of sick leave to receive reprimands, negative performance reviews, even threats of other discipline, for using too much sick leave.

These threats and punishments are part of most agencies chronic effort to curb the sick leave abuse, which sadly, is a real phenomenon in the workplace. Since the advent of computers, it’s been easy for employers to scan the workforce to see who’s using more than the “average” number of sick days. Then, they often use an almost scattergun approach to warn, threaten and harass apparent abusers. Although it is illegal to “adversely impact” employees who use sick leave for an FMLA-covered illness, this doesn’t stop all employers from snagging perfectly good employees in their net in the hunt to find the cheaters.

When sick employees are harassed for their legitimate use of sick time, this doesn’t make the employee perform the job any better. In fact, the harassment can make them sicker, and can even result in harassment complaints or workers comp claims. If you have a serious medical condition, or if you have a family member with a condition who you must care for, you have the right not to be bothered about this. Call your union rep if you are subjected to this type of harassment.

On the other hand, not all sick leave usage is connected to a serious illness. People have colds and flu and other mild ailments – and people with children have double the problem. This is what your negotiated sick leave benefit is intended for. The City may certainly bring your sick leave record to your attention, but should you be “written up” as if you’re an abuser?

What IS sick leave “abuse,” anyway? And what rights do you have, under your contract or under law, to the legitimate use of sick leave in the workplace? Here are a few answers:

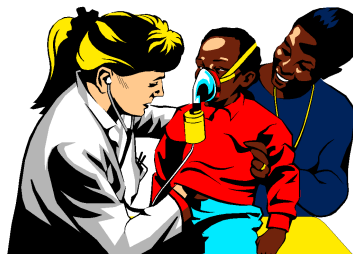
First of all, there is NO legal definition of sick leave abuse. Bargaining teams spend hours arguing over this subject and never come to agreement. Ultimately, Management has the right to monitor sick leave and to question whether the use was legitimate. Employees have the right to defend themselves – and to complain if they believe that the questions have crossed lines of appropriateness or privacy.

Under HIPAA (the Health Insurance Portability Accountability Act) you are protected against your employer probing for personal information about your medical condition, and your employer is prohibited from sharing any of your personal information it has access to. However, if you use sick leave, depending on the details of your employer’s policies, you CAN BE asked to “bring a doctor’s note,” to verify illness.

The details of those policies are often the stuff of grievances, when perfectly good employees are told that they are now on the “sick leave verification list” and are being watched. In general, though, the employer **does** have the right to “watch.” In fact, it is perfectly legal for your employer to watch your comings and goings, even to hire a private detective or to videotape you while you are off the job being sick.

FAMILY MEDICAL LEAVE ACT

If you use a lot of sick leave, there’s a reasonable chance that either you or your family members have conditions covered by the FMLA or the CFRA (which is the more liberal, California medical leave law.) These laws protect you against termination for up to 12 weeks if you are off the job for a certified serious medical condition: your own or



that of a family member. The “threshold” of a serious condition is fairly low; many different illnesses apply. If you have questions about this, talk to your HR department or your Association staff.

Certain aspects of the FMLA are established by law; other parts are negotiated into your MOU or Personnel Rules. For example, the law says nothing about PAID leave, but almost all public agencies provide some paid sick leave, which you are allowed to use during FMLA leave. You are also allowed to use your vacation time.

Some employers (and some unions) provide disability plans, which usually “kick in” when your accrued leave has been exhausted. If your agency participates in the State Disability Pay program (for which you are paying 1% of your salary) this benefit becomes available to you after only seven days off the job.

FMLA leave may be taken on an intermittent basis or in the form of a reduced work schedule. **If you have a medical problem, with occasional “flare ups” which affect your time on the job, or your job performance, you should let your employer know about it.** Having an identified “protected illness” can make all the difference in the way you are treated on the job.

Employers have an “affirmative obligation” to notify you of your rights under the FMLA. This means that if your supervisor notices that you are using a lot of sick leave – or if you tell them that you are using the leave because of a serious condition for yourself or a family member – they are supposed to tell you about your rights under the FMLA.

If you are written up, or otherwise harassed over the use of sick leave, *even if you don’t have an FMLA letter on file*, this discipline can probably be rescinded if the City had reason to believe that you had a serious medical condition and failed to tell you about your FMLA rights.

WORKERS COMPENSATION

If you have an injury that arises from the course of employment, you are protected under the California Workers’ Compensation Act. Even if you have not filed a claim, if your supervisor learns that your absence is due to a work injury, he is obligated to inform you of your right to these benefits.

It is illegal for employers to discriminate against an employee who files a workers’ compensation claim.

However, having a claim does not mean that you can never be terminated. It does mean that you are protected for at least 12 weeks – under the FMLA.

Discrimination can include harassment, loss of normal wages or benefits, or an attempt to dissuade you from pursuing your claim. If you are written up, given a negative review, harassed, or threatened with discipline because of absences connected to a work injury, you should call your union rep for assistance. Most employers will stop the harassing behavior when faced with potential legal costs for discrimination.

You should NEVER avoid filing a genuine workers’ compensation claim “because the City might be angry.” You need appropriate medical care – possibly for that body part for the rest of your life. If you have not filed a claim and a minor injury turns out to be a major one, the City is likely to question your claim and perhaps even deny it. Also, in truth, employers are much, much less likely to terminate employees who are off the job with workers comp claims, once their FMLA periods have expired, than those with non-work illnesses or injuries.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and California Fair Employment and Housing Act (FEHA) all make it illegal to discriminate against disabled workers. Discrimination includes harassment, of course, and any other form of discipline used against someone who has been recognized as a “qualified injured worker” and is being accommodated on the job. Accommodation can be anything from a reduced work schedule to a raised desk. Most accommodations take the form of transfers to different jobs, but the employer is not required to create a job for a disabled person.

An accommodation arrangement results from an analysis, usually done by a professional in this field, of the limitations of the disabled person and the needs of the job. **Most people who are sick, even with a serious illness, are NOT protected under the ADA.**

You are eligible for protection – accommodation – if/when your condition results in a permanent physical or mental disability.

The law does not provide for temporary modified duty, although many unions have negotiated provisions for this into their MOU’s. If you are off the job with an injury, able to do *some* work,



but not your normal job, you can ask for modified duty. If you're denied and you believe this is unfair, your union rep *may* be able to help. Each case is unique, because each job and each person's medical situation is unique, but if you believe that you are the victim of discrimination, this may be grievable.

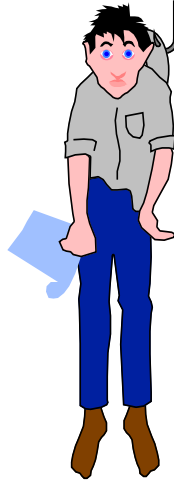
IF THEY TRY TO FIRE YOU...

It's not impossible to terminate a sick or injured public employee – but we can make it difficult. If you have used sick leave, *and the City does not believe that you are truly ill, or truly THAT ill*, they can give you a termination notice. You have the right to two levels of appeal: first a "Skelly Hearing," usually in front of your Department Head, and second a "full, evidentiary hearing" before a "reasonably impartial hearing officer or body."

The burden is on the City to prove that you are not using the leave legitimately. Usually, in cases like this, they need to have substantial proof.

You can also be terminated if you have exhausted your FMLA time for a serious illness or injury and are not able to return to work. Under these circumstances, employers are often flexible, working with an employee to determine when he or she will be able to come back to work. Employees are often able to come back to work partially, or with accommodation, so this is where the ADA "interactive analysis" comes into play.

Sometimes, however, the employee really won't be able to work again in the near future – or ever. Sometimes there is a dispute over this, or over whether or not the employer **COULD** accommodate the employee, but simply refuses. This is where your



Association staff plays an important role. **The City cannot terminate an ill or injured worker without providing a full hearing, under "Skelly" AND without filing, and being granted, his/her PERS disability retirement.**

These steps can create quite a hurdle, especially if the employee believes that he really can still work. ADA attorneys make their livings suing employers who fail to provide "reasonable accommodation." Further, you have the right to appeal before a PERS disability panel arguing that you are being involuntarily retired, but are truly still able to work. The Courts have also gotten much more careful about these cases, rendering a decision in the year 2000 that a City Manager cannot be the final hearing officer in your Skelly process in cases involving potential PERS disability retirements.

PERS DISABILITY RETIREMENT

PERS has a long-established program to allow early retirement ... "if the injury renders the employee incapacitated, mentally or physically, from performing his or her duties." If your employer is terminating you for being too sick or injured to work, it has an absolute obligation to secure a disability retirement on your behalf. If you're vested in the PERS system, you cannot be forcibly "separated" from the City until your application has been accepted – and sometimes these waiting periods may take up to a year! During this period, you have the right to "spend down" any accrued leave. You also have the right, if you are reconciled to retiring and over age 50, to take a PERS service retirement, rather than a disability retirement. If you have more than ten years on the job, the service retirement will probably provide a higher monthly benefit.



What Are All These "Consultants" Doing Around Here?

One of the unspoken outcomes of economic crisis in public agencies is that so many changes have been occurring that it is nearly impossible for most employee organizations to keep up with them. Furloughs, layoffs, early retirement programs and hiring freezes are so commonplace that the population of your workplace can change massively from one week to the next.



One aspect of so much change is that long-standing Personnel or Civil Service Rules can easily be ignored or eroded. After all, most unions are doing their best just trying to hold onto their members' wages and benefits. It is almost an impossible task for them to make sure that the employees showing up at the job are actual members of the workforce. And, at the same time, it is SO much easier for a Department to hire a "temporary" consultant (maybe even a retired employee???) to keep the place running than to go through the tedious process of advertising and filling a position. And they are so much cheaper, too.....Maybe...

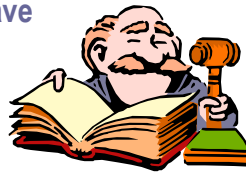
It's easy to forget that there are reasons for all those burdensome rules about advertising, testing and hiring employees, "on the basis of merit" for jobs in public agencies. They were intended to protect against graft and nepotism: politicians giving jobs as rewards for political contributions or managers hiring their best friends or relatives. Since the '80s, however, the concept of "contacting out" has become more and more popular with governing bodies, as a way to get the public's work done at lower and lower prices. Private companies have come to "infiltrate" the workplace, so that the line between public and private is almost indecipherable.

Today, it's not at all shocking for a city employee to find that the job that her co-worker vacated last week is now filled by a "consultant." The consultant can be self-employed, or employed by an outside agency, and might be there for a week or for an indefinite period of time. They are probably not receiving paid benefits, most certainly did not pass an eligibility test, quite possibly have a traceable relationship with someone in top management or on the Council, and are most certainly filling a job that used to belong to your union. Depending on the kind of work they are performing, and who's collecting the bulk of the money, they may be less expensive than the average employee doing the same job – or far, far more expensive. You are expected not to ask.



The presence of consultants, temps, and contractors in your workplace erodes the City's rules, erodes the membership of your association, undermines your own bargaining power and quite possibly diverts money that should be urgently spent elsewhere. What can you and your Association do about this? PLENTY.....

EROSION OF BARGAINING UNIT... First, your union can file a grievance, and ultimately, a claim with the Public Employment Relations Board, over this "erosion of the bargaining unit." Simply put: the duties of a job belong to a job classification. The classification belongs to the union and is listed as a "represented class" in your MOU. If the duties of the position are assigned to someone outside the bargaining unit, the City has essentially "stolen" a position from the union. The old fashioned term for an "erosion" grievance is a "union security claim." It violates the security of your organization to have jobs assigned to non-union members.



VIOLATION OF CIVIL SERVICE OR PERSONNEL RULES... If your agency has written rules about how positions should be filled, your union can take legal action to make sure those rules are enforced. If a contractor has shown up in your workplace, clearly performing the duties that used to be done by a permanent employee, chances are that the City's rules have been completely ignored.

A "CARGILL CLAIM"... In *Cargill vs. the Metropolitan Water District*, "temp agency" employees who worked for years in the District's maintenance operations sued over their denial of PERS retirement benefits. With little difficulty they were able to prove that they were actually "common law employees" of the District. After all, they worked on District property, with District tools, under District supervision. The Courts found that several hundred people were due back benefits and future, permanent employment.

VIOLATION OF STATE AND FEDERAL EMPLOYMENT LAW... For the past two years, both the IRS and State Franchise Tax Board have been cracking down on employers who hire independent contractors who are not really independent at all. Contractors are far less expensive than employees because they pay their own unemployment and social security taxes, and absorb all their own liability. Employers don't have to pay the workers comp expenses, nor if they're public employers, must they provide any benefits covered by union contracts.

There is only one hang up: most of these independent contractors, much like the employees in the Cargill case, would never meet the "test" for independence. They don't work out of their own offices or own their own equipment and don't exercise autonomous decision making. In most cases, City Management exercises daily control over their work product.

There is nothing to stop you, as an individual or as a union, from reporting this "misclassification" of consultants and contractors to the appropriate government agency. It might take a while, but the Agency WILL investigate. Once the City is compelled to terminate its relationship with the independent contractor (quite possibly after paying back payroll taxes...) it will have no choice but to fill the position with a regular employee, hired under appropriate city rules – and assigned to the appropriate employees' bargaining unit.

Have You Heard about the Facebook Firing Case?

In October 2010 the National Labor Relations Board (NLRB) filed a complaint against American Medical Response (AMR), a Connecticut ambulance service, on grounds that the company violated federal labor law when it fired Dawn Marie Souza. Souza had posted derogatory remarks about AMR and her supervisor on her Facebook page, and when AMR called her in for questioning, they refused to allow her to be accompanied by a union rep.



AMR had an Internet and Communications Policy which said:

Employees are prohibited from posting pictures of themselves in any media, including but not limited to the Internet, which depicts the Company in any way, including but not limited to a Company uniform, corporate logo or an ambulance, unless the employee receives written approval from the Vice President of Corporate Communications in advance of the posting Employees are prohibited from making disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors.

The NLRB charged AMR with violating Souza's federal right to union representation, as well as interfering with her right to openly discuss the terms and conditions of her employment. In February 2011, the case was settled, with substantial replacement income for Dawn Marie. AMR also agreed to revise its "overly-broad" Internet Policy to ensure that they do not improperly restrict employees from discussing their wages, hours and working conditions with co-workers. They also promised not to deny future employee requests for union representation.



Labor Relations Update...

Supervisor May be Held Liable for Deliberate Indifference to Unconstitutional Conduct of Subordinates

In 2006 while in the custody of the County jail, a group of inmates attacked another inmate, Dion Starr. While they were stabbing him, Starr screamed for help, but the guards on duty ignored him. In fact, when the attack is over, the deputies yelled racial epithets at Starr, kicked him, and failed to help him get medical assistance.

Starr sued the County Sheriff and his deputies for violation of his rights under the Eighth and Fourteenth Amendments. He alleged that the Sheriff was liable as an individual because he knew or should have known about the dangers in the County jail, and was “deliberately indifferent” to those dangers. Specifically, Starr alleged there had been numerous incidents in the jail where inmates were killed or injured while the Sheriff’s subordinates looked on indifferently.

The Sheriff moved to dismiss the claims on the grounds that he was not personally liable. But the Court of Appeals found that Starr’s complaint was “sufficient to plead causes of action for supervisory liability” for the unconstitutional actions of his subordinates. A supervisor may be held liable for a subordinate’s illegal actions if either (1) the supervisor was personally involved in depriving another of federal rights, or (2) a connection exists between the supervisor’s conduct and the constitutional violation. A “connection” could be action or inaction in the subordinate’s training, supervision, or control, or “conduct that shows reckless or callous indifference to the rights of others.”

In Starr’s case the Court held that the Sheriff Department’s deliberate indifference was compounded by his well-established “knowledge of past unconstitutional conditions and conduct in the jail.”

Employment

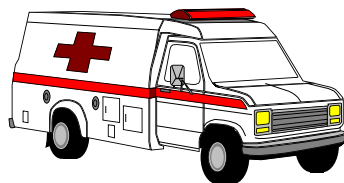


Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If *you* have a work-related problem, feel free to talk to your Board Rep or Association Staff, at (562) 433-6983 or cea@cityemployees.net. There is no charge to Association members, and all conversations are confidential.

Question: I am a bus driver and while driving I became ill in the middle of my shift. I was in terrible pain and felt like I was going to pass out. I called the station, and my supervisor said to drive to the next stop. I made it to the stop. He met me there and told me to drive his car back to the station. I told him I didn’t think I could drive, but he

said I had no choice. I did it, and when I got to the station, they called an ambulance for me. At the hospital they found that I had a burst appendix. I think this emergency was mishandled: I could have died or hurt someone. What can I do?



Answer: You are right. Your supervisor should have been trained to recognize this was

a medical emergency. Since the event is over, there is really no “remedy” available – unless you would like your Association rep to talk to the City about this poor judgment. No matter what your supervisor told you to do, you would have been within your rights to simply call 911 for medical help any time during this ordeal.

Question: I’m our Association president, and our records clerk has approached me about a learning opportunity the City has offered her: training to work as a dispatcher in the Police Department. She would be able to promote when there’s an opening - - or take these skills to another city. But the City wants us to agree that she isn’t due any additional money during this training period. She really wants to do this and is willing to take the job at her regular pay.

I want to know first, whether we have any role; and, second, if we do, whether we should agree to it.

Answer: The Association has a role only because you don’t want this one case to set a precedent where any employee can do any (higher-paid) job for any length of time – and allow the City to call it a “training program.”

Your role, for this single instance, is to tell the City that its training plan is fine so long as it ends on a specific date AND so long as the employee gets the FULL PAY of her new position after that date.

Question: I was written up on my performance review for “using too many days for doctor’s appointments.” I don’t think this is fair because several of my appointments were for treatment for a worker’s comp injury, and the others were all for a chronic digestive problem that I’ve already told my supervisor about. Is there anything I can do about this? I’m afraid I’ll get fired the next time I need to go to the doctor!

Answer: It’s illegal for a City to retaliate against an employee for filing a workers comp claim – and it’s definitely a form of retaliation to mention the time off due to the injury on your performance review. Further, the time off would be covered by the Family Medical Leave Act (FMLA) and should not be mentioned on the review for that reason.

The absences for the chronic digestive problem are probably ALSO covered by the FMLA. You should bring in a letter from



your doctor explaining that you have an ongoing medical condition. (In fact, if the City knew about this condition, they should have told you about your rights under the FMLA.)

As long as you fill out the FMLA form and have a doctor’s statement, you should be able to get those comments removed from your review. If you need help, call staff at the CEA office.

Question: Risk Management has decided they want us to wear hard hats. I want to know: can the employees be reprimanded if they fail to follow this directive?



Answer: Strictly speaking, if you never have had to wear hard-hats before, and “necessary safety equipment” is not identified in your departmental rules, this could be considered a “change in terms and conditions” which requires bargaining. HOWEVER, if the City is able to prove that hard-hats are indicated (by OSHA) as necessary equipment, you won’t have the right to block the change.

So, the answer is yes, they could reprimand employees for refusing to wear hard-hats IF these are a legally-mandated requirement. If they AREN’T legally-mandated, your Association doesn’t have to agree to the change at all.

Question: I want to know whether an outside consultant can be assigned to function as my supervisor.

Answer: Sadly, the City can assign whomever they wish to supervise you. This is entirely a management prerogative. (The larger question is why the consultants are there in the first place.)

Question: My boss put things on my performance review which are very subjective and, frankly, not even true. How do I go about getting this straightened out?

Answer: If you can’t convince your supervisor to take these untrue statements out of your file, you should go up the “chain of command” with a grievance or appeal. Ultimately, employees have the right to sue over untrue materials submitted to their personnel files.