

Santa Monica Municipal Employees Association



June Supplemental News

Voter Initiatives on Public Employee Benefits: How Serious is the Threat? Robin Nahin, CEA Staff



As we speak, statewide voter initiatives are circulating which, if implemented, could change the shape of retirement benefits for all public employees. Amongst other changes, the initiatives could

- Prohibit “full retirement” for current employees until age 62
- Prevent future employees from ever earning more than 60% of the average of their highest three years’ compensation
- Deny retirement benefits entirely for future part-time employees
- Require future employees to make retirement contributions at least equal to their employer’s contribution and
- Prevent any public agency from providing retroactive pension increases “under any plan...”

Similar measures are also being considered as constitutional initiatives in the Legislature. These could go into effect if passed by two-thirds of the Assembly and the Senate. How likely is it that any of these initiatives **will be** passed by the voters or by the Legislature? If they DO pass, what would be the outcome, legally and financially, on you? Or on your employer? On the State of California? With the help of the State Office of Legislative Analysis, here are some predictions:

The State of the Law for Current Employees

First of all, you should know that **the state of the law on retirement benefits for CURRENT employees is that it is essentially impossible for the government (or the voters) to take these away.** The Courts have repeatedly said that both pensions and retiree health benefits are forms of deferred compensation, which cannot be less at the point of retirement than they were at the point of hire. The concept of “deferred compensation” is that you have *earned* these benefits, over time, as part of an employment package; their payment has simply been “deferred.”

The only way that your employer (or the state, or your union) may modify retirement benefits for current employees is to provide some “comparable new advantage” to the benefits package. This new “advantage” would need to be of equal value to the obvious “disadvantage” of losing the right to retire under the current plan, at age 50 or 55.

At this time, we know of no employers offering “advantages” to public employees association large enough to cause them to give up current retirement programs for their members. However, many employers are trying to convince bargaining teams to “voluntarily” negotiate away their current plans, under threat that “the alternatives could be worse.” Right now, the state of the law is that if employees associations did agree to “negotiate away” retirement benefits for current employees, without “comparable advantage,” their members could probably sue their unions for this loss. Similarly, if public employers try to force takeaways (by declaring “impasse” and implementing “last, best offers”) it is probable that the unions (or their members) would be able to sue and win the benefit back.

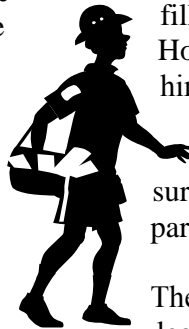


This state of the law – your right to protect the “deferred compensation” of your retirement plan -- is rooted in the Contracts Clause of the U.S. Constitution. You would think that this is immovable, but economic realities have a lot to do with the way judges change their “interpretations” – even of the Constitution. Right now, dozens of public employers in California are forcing modifications of their employees’ retirement benefits. *We will keep you apprised if the “state of the law” changes...*

CHANGES TO FUTURE EMPLOYEES’ BENEFITS

On the other hand, there is very little to protect public employees who have not yet been hired. They have not yet incurred any deferred compensation. It is possible for the State, your employer or your association in conjunction with your employer to provide lower benefits to “new hires” when they retire. This is the most common “takeaway” at most public employee bargaining tables today. New hires are coming in with lower PERS plans, paying large portions of their PERS plans, paying large portions of their retiree health plans – or with agreements that they have NO retiree health plans at all.

Since 1982 PERS law has required that part-time employees “go into the system” after 1040 hours per year. This law went into effect to STOP cities from filling full-time jobs with part-time labor. However, the law could clearly be lifted for “new hires.” The end result would certainly mean that larger portions of our workforce would be hired as part-timers. (You probably won’t be surprised to hear that there is no legal definition of part-time employee...)

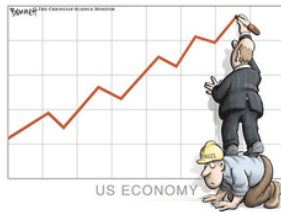


There are very few benefit takeaways that can’t, legally, befall “people who don’t work here yet.” They have to be paid minimum wage (and time-and-a-half after 40 hours.) They are protected by the ADA, the FMLA, discrimination laws, workers’ compensation and, some day, they will have the right to bargain. But that’s about it. There’s a strong likelihood that “new hires” in public agencies will see a much diminished set of benefits in public agencies.

The only problem with “sticking it to the new hires,” from public agencies’ perspective is that it doesn’t solve any *immediate* financial problems. After all, most agencies are still downsizing and doing very little hiring. Further, in areas where employers *must hire* and must be competitive (such as engineering and computer work) the lack of benefits will create problems with recruitment and retention.

FINANCIAL SAVINGS ACROSS-THE-BOARD

According to the Department of Legislative Analysis, any real savings that public agencies can gain from cutting benefits must come from the packages of **current** employees. For example, if the Courts were to allow the legislature to move “full retirement” to age 62, there is no doubt that the savings to public agencies would be significant and immediate. Right now, the average highway patrol officer retires at age 53; the average city police officer, at age 55. The cost of the “3% @ 50” (the sworn employees’ PERS benefit in most cities) is generally over 40% of their salaries. If they were not allowed to draw on their benefit till age 62, the cost of their benefits would plummet. The scenario for non-sworn employees is similar, but not so extreme. We retire on the average at age 61. One more year doesn’t defer as much payment, but, then again, we outnumber police and fire fighters two-to-one...



ENTIRELY UNKNOWN FISCAL CONSEQUENCES...

On the other hand, there are myriads of “unintended consequences” that might result from massive changes in the PERS programs. Just as layoffs in public agencies have swelled the unemployment rate (thereby turning taxpayers into unemployment- and welfare recipients and foisting new expenses on the state,) the elimination of PERS payments for whole sectors of the workforce would lead to increases in Social Security payments. Currently, most public employees aren’t in Social Security because agencies are allowed to substitute PERS. But those employees who are not in PERS are generally enrolled in Social Security.



Secondly, as we mentioned before, jobs would need to be more highly compensated if the value of benefits were reduced. As these are already highly paid jobs, the additional cost could be significant. It could also result in greater and greater gaps between the “haves” (professionals and managers) and the “have-nots” in agencies that are supposed to be egalitarian in nature.

There is also some concern for the liquidity of retirement funds, if employers’ contributions were reduced drastically. This is really an argument that says, “PERS won’t be able to make money as much money in the stock market if it doesn’t have as much money to play with.” This may seem to be a specious argument, but keep in mind that in the years 2007 and 2008, more than 75% of the benefits paid to retirees came from money PERS made *on its money*, rather than money paid by employees and employers. It was the reason why, for more than 10 years, most employers made NO PERS contributions at all!



WHAT’S THE ADVANTAGE OF AN AGING WORKFORCE?

Ultimately, there is no real advantage to society to make it more difficult for public employees to retire.

Older workers, especially older police, fire and maintenance workers, are far more prone to (expensive) injuries. Their presence also blocks the employment of younger workers, who are desperately trying to make their way into the workforce. This phenomenon has already been widely recognized as one reason for our high unemployment rate now: older employees who lost money in the recession have postponed retirements, often indefinitely.



Further, public employees whose benefits are reduced (in fact, ANY employees whose benefits are reduced) have a much greater likelihood of becoming a drain on society, rather than an asset.

The average PERS retiree collects \$28,500 per year. What if this amount were cut in half? How many of these people would lose their homes? How many would end up in other parts of the (rapidly shredding) safety net, where the rest of us would be supporting them, anyway? (And none of this mentions the obvious fact that when someone has spent his life in public service, “the public” might just have the obligation to say “thank you...”)

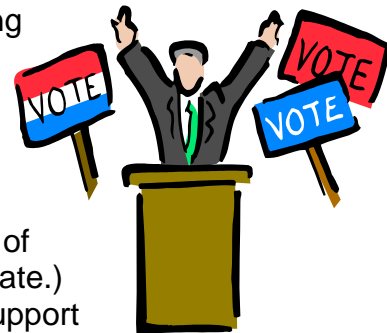
The truth is, when public employees leave their jobs, at any age, they don’t just “fade away;” they are still part of our social network. If we fail to take care of

people on one end, we still find ourselves caring for them on another. There isn't any real benefit to public agencies or the public they serve, to squeeze

every last dime out of the lowest paid workers. We are all still in the same fishbowl. Or at least that's how it's supposed to work a civil society.

PENDING LEGISLATION COULD AFFECT YOUR JOB (A LOT)

The League of California Cities has just published its legislative agenda, advising local leaders on the bills they should support or oppose at the state level. City Councils and District Boards can have considerable influence on their legislators' votes – but so can citizens and local union leaders.



The League is an advocacy organization for City Councils and Managers. Occasionally, the positions that the League supports coincide with the interests of their employees (especially when they are lobbying for more money from the State.) But most of the time, they are diametrically opposed: they DO NOT generally support new laws that are good for employees or their labor organizations.

The following are some proposed new laws, along with information about the League's position. You and/or your union should feel free to contact your state legislators.

AB 400 Paid Sick Days.

This bill would provide any employee who works for seven or more days in a calendar year, with some paid sick leave. The time would accrued at a rate of one hour for every 30 hours worked. This bill does not apply to employees covered by a labor contract that already includes paid sick days. *(The League opposes this bill...)*

AB 438 County Free Libraries.

This bill would require voters to approve a City Council's decision to provide library services through a private contractor. It would make the "privatization" of libraries more difficult. *(The League opposes this bill on the grounds that the decision to privatize libraries is a mere "administrative decision," - exactly the kind of decision Councils are elected to make.)*

AB 455 Public Employee Organizations.

This bill would require 50% of the membership of a Personnel or Civil Service Commission to be appointed by members of the governing board of the public agency. The other 50% would be selected from a list provided to the agency's governing body by the largest recognized employee organization. *(The League opposes this one for obvious reasons...)*



AB 506 Municipal Bankruptcy and Fiscal Emergencies.

This bill prohibits local governments from filing for Federal bankruptcy protection without first getting permission from a "mediator" who evaluates the facts and makes a financial recommendation. It would prevent public agencies from declaring bankruptcy without complete evidence of "emergency," thereby prevent them from erasing the obligations of union contracts. *(The League VIGOROUSLY opposes this one! They say that the mediator would be a "state controlled arbitrator," and that the law "contains an obstacle course of criteria...replete with bias against local agencies.")*

AB 646 Public Employee Organizations: Impasse Procedures.

This bill would give public employee unions the right to request fact finding once an impasse is reached in bargaining. *(The League gave MANY reasons that this would be a terrible law: it would impose “significant cost” on agencies “for a process that would be at the sole discretion of the unit.” It would also usurp “local authority” and override perfectly good impasse procedures – many of which already provide for mediation and fact-finding. ...Of course, many others don’t...)*



SB 931 Public Agencies. Outside Legal Counsel.

This bill would forbid public agencies from using taxpayer dollars to pay for outside consultants or legal advisors for purposes of helping the employer to minimize or deter the exercise of public employee union activities. *(The League really opposes this one.)*

What is Arbitration? (And Why Is It An Essential Tool In Your Association’s Arsenal?)

Once your Association negotiates a Contract with your employer, you assume that everyone will follow it -- correct? But what if the City decides *not* to follow it? Or, more commonly, what if your Association and City have a difference of opinion about what the new language in the Contract actually means? What if a new supervisor or Personnel Director or City Manager decides to interpret the old language *differently*? How do you go about enforcing your MOU? For the last 70 years or so, the final answer, for most unions, has been **arbitration**.

Arbitration is a formal hearing process. It is much quicker and less expensive than court, but holds the agreed-upon authority for resolving a wide range of “civil” disputes. In labor conflict disputes -- between a union member or the union itself and the employer -- the arbitrator is a judge or attorney with a background in labor law, *and special expertise in interpreting labor contracts*.

Usually the Last Step...

Arbitration is generally, but not always, the final step in an association’s grievance procedure. This is **binding** arbitration.

In many agencies, however, the decision of the arbitrator is *advisory* to the City Manager or the City Council. In this case, the Manager or Council may

believe that their decision is “final and binding,” but, in truth, **the employee retains the right to go to Court**. In fact, if the arbitrator has heard the matter as a “full evidentiary hearing,” and the Manager or Council merely read the decision and reverse it, it is very likely that the employee can take the arbitrator’s decision to Court for implementation.

Limitations to Arbitration

Arbitration has long been celebrated as the speedy and affordable alternative to court. In recent years, however, it has developed its own form of bureaucracy. It often takes months to select and schedule an arbitrator; the parties usually strike from a list provided by the State Mediation Service. And the cost can easily run between \$3,000 and \$10,000. For this reason, your Association Board must vote on whether it will spend your money to take a particular case to arbitration.

Your union has a legal obligation to represent members in all aspects of your negotiated agreement with the City – and arbitration is usually part of that negotiated agreement. **HOWEVER**, you are not obligated to take a bad case (one that “lacks merit”) through arbitration. Your professional staff have the job of advising your Board on the legal merits of a case. If the Board decides that a case “lacks



merit” and that it won’t take the case to arbitration, the individual employee still has this right.

Why Choose Arbitration?

So, what, actually IS arbitration, and what kind of situation could cause you -- or your association -- to rely upon it? There are two kinds of cases that may, if your MOU provides for this, be heard by an arbitrator: **grievances** and **disciplinary appeals**. A grievance is a violation of an employee’s (or a group’s) rights by the employer. The rights in question must be identifiable somewhere in the City’s written rules or must be an established “past practice.” The remedy, which you would ask the arbitrator to rule upon, must clearly address the violation.

In a grievance, the employees, represented by their union, are the “moving party.” The burden is upon the union to prove that the City did something wrong. For example, let’s say that you were told to stay at work, after normal office hours, to finish an urgently-needed report. You work two hours of overtime, and the next day, your boss tells you to go home early, because he “doesn’t have the budget” to pay you. However, you want the time-and-a-half money!

Trying to force you to take time off AFTER the overtime has already been worked is a violation of federal law and (probably) your Contract. So, you start by filing a grievance. You and your union rep go “up the chain of command,” ending with a meeting with the City Manager, who still refuses to give you your pay. Although only two hours are at stake, your grievance is legitimate. You and your Association are both frustrated by the City Manager’s refusal to “play by the rules,” so it files for arbitration, on your behalf.

Arbitrating a Major Discipline Case

Arbitration is most frequently used as the “top step” in the appeal of major discipline. But, in a discipline case, the roles are reversed: *the City* is the moving party, and the employee is “innocent until proven guilty.” The burden lies with the employer to *prove* that your member has done something seriously wrong, and by law, he has the right to a “full evidentiary hearing before a reasonably impartial third party.” The “reasonably impartial party” can be a hearing body, such as a Civil Service or Personnel Board. It can also be the City Manager. But most often, it is a professional arbitrator.

In a discipline case, the arbitrator will review evidence and hear testimony about whether or not the employee

“really did it” and how severe an infraction “it” really was. For example: the City says you stole a tool from work; you say, you pulled it from the trash bin. The City says it’s worth \$400; you say it was broken and worthless. The City says you should be fired; you say that you’ve been an excellent employee for 14 years, with no prior discipline – and that you’re very sorry you took the broken tool from the trash bin.



The arbitrator makes a recommendation. It could be sustaining the termination, advising NO discipline at all, or something in between. The “something in between” is most common. Again, if the City refuses to abide by the arbitrator’s recommendation, the employee can probably take the arbitrator’s decision to court – and win.

Where Does PERB Come In?

Since 2001, employee organizations have also had the ability to take grievance matters (contract violations) before the Public Employment Relations Board. PERB enforces the Meyers-Milias-Brown Act, the state bargaining law. Employers may be in violation of the law when they “unilaterally modify” (violate) your union contract. So, your Association has the option to take a contract violation case to PERB, rather than arbitration.

Unlike arbitration, PERB does not cost. However, given the very high level of disputes in the public sector today – and the fact that PERB is, like most State agencies, understaffed – cases are taking as long as a year. **Further, PERB does not generally hear discipline cases.** We say “generally” because the Board will hear cases of individuals who allege that they were disciplined in retaliation for union activity.



As the Field of Wrongful Termination has Matured...

So, arbitration still has a crucial role in resolving labor disputes, especially major discipline cases. In the last two decades, as the field of wrongful termination has matured, even small cities that have never negotiated an agreement to arbitrate are often willing to use this process. This is because employees who are terminated without a fair hearing have a high likelihood of taking their cases to court – and winning.

The Process.

Arbitrators often become identified as “friendly to” one side or the other, so the process of “striking from a list” helps the parties pick the most neutral hearing officer. Further, once both sides know that the other is serious, it isn’t unusual that the parties often begin settlement discussions. It is amazing how many serious matters are settled when formal hearing is pending.

The arbitration proceeding is quite “court-like.” The arbitrator is the judge and each side’s representative calls witnesses, who testify under oath. Often, there is a court reporter (also an expense) and increasingly, arbitrators are requiring both sides to submit post-hearing legal briefs. After that, the decision may take a few weeks, or a few months. Most MOUs call for the cost of arbitration to be split between the parties, although “loser pays” language is negotiable, and usually is to the union’s advantage.

To PERB or to Arbitration?

Again, since arbitration is not only costly, but often only advisory, you may want to take contract violations directly to PERB. PERB’s presence of has taken a lot of pressure off small associations, which have been unsuccessful at persuading their cities to agree to arbitration. When the employer knows you have options, they often manage to resolve the problem...

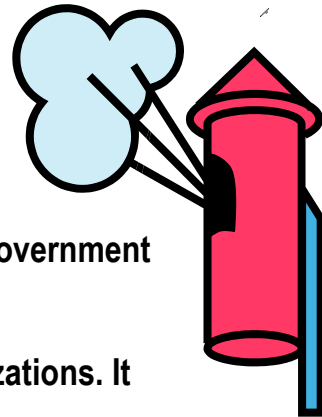
For discipline cases, however, arbitration is still the hearing method of choice. Even where the City has a standing Personnel Board or Commission, a legal professional is the best person to “advise” the Board. Also, the mere presence of a “full, evidentiary hearing process” can have a potent effect on both sides’ willingness to settle their differences....

IRS Kicks Off “Whistleblower Reward Program”

Did you know that the IRS now has a Whistleblower Reward Program? It has become increasingly popular as employees in large corporations have seen their own incomes and benefits decline, while their companies rake in profits.

The very first “winner” was an accountant who tipped the IRS off to his employer’s tax evasion. His reward was \$4.5 million. This was 22% of what the government recovered from his Fortune 500 company.

The whistleblower program was designed to encourage tips in large-scale organizations. It mandates awards of 15% to 30% of the amount recouped.





RECENT LEGAL DECISIONS

The following are significant legal decisions that further the rights of public employees in California. Please keep in mind that each case is unique. If you have a *specific* legal question or problem, call your Board Representative or our Professional Staff at (562) 433-6983 or cea@cityemployees.net.

COUNTY CAN DISCIPLINE EMPLOYEE FOR THREATS OF VIOLENCE, EVEN IF THESE ARE BROUGHT ON BY DISABILITY

An employee working for the Orange County Superior Court had a recognized mental disability, bi-polar disorder, which caused her extreme mood swings. During an intermittent “manic” phase, she angrily yelled at co-workers in one of the City Police Departments. She also told two police officers that she was adding them to her “Kill Bill” list, and accused another of intentionally victimizing her.

The Court removed her from her assignment and her doctor placed her on medical leave. While on leave, the employee continued to send threats to co-workers in the form of alarming e-mails and phone calls including statements to the effect that “God will ensure that you pay” for her mistreatment.

After several weeks, she was released by her doctor for return to duty. The Court put her on paid leave, conducted an investigation of the complaints, and sent her a termination notice. She then filed a complaint with the Department of Fair Employment and Housing (DFEH) alleging violation of her right to use leave time under the FMLA. Later she also filed suit, alleging that she had not been provided an “interactive process” under the Americans with Disabilities Act.

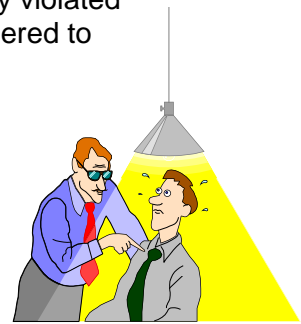
The employer responded by pointing out that this employee had already used all of her leave time under the FMLA, and was not being terminated due to her disability, but due to her unacceptable behavior. Ultimately, the Court said that although the employee’s bad behavior was clearly caused by her disability, this did not prevent the employer from terminating her because of that behavior. The Court stated that the law authorizes employers to distinguish between disability-caused misconduct and the disability itself **“in the narrow context of threats or violence against co-workers.”** (But the Court pointed out that the same distinction would NOT be made if the employee’s psychological disability merely resulted in poor job performance or other difficulties, which could be accommodated...) The Court upheld this termination, based on threats of violence, as legitimate – without regard to the employee’s legitimate disability.



EMPLOYER CAN'T USE “FOCUS GROUP” TO UNDERCUT BARGAINING

The Public Employment Relations Board has found that Omnitrans unlawfully bypassed the Transit Union’s bargaining authority when it formed a focus group to work out a new bidding procedure for its drivers. The focus group was established by the District and was composed of managers, drivers, a dispatcher, a member of the union’s board and an outside facilitator. They met three times, then made a recommendation to the District, based on the seniority-based bidding procedure. The District then implemented the recommendations.

The Union filed a grievance over this “unilateral change in working conditions,” and the District refused to hear the grievance. Then the Union filed at PERB. PERB found that the District had not only violated the Union’s contract, but had violated the grievance procedure as well. The District was ordered to rescind the new bidding procedure until fair bargaining was concluded.

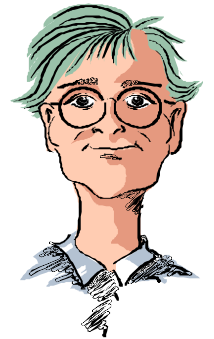


POLICE OFFICERS CANNOT REFUSE TO COOPERATE WITH CITY'S INVESTIGATION OF OVERTIME EXPENSES

Several Police Officers sued their City for unpaid overtime, which the City had refused to pay. The City had refused to pay the overtime on grounds that the officers had violated the policy which said that Police Department employees could not work overtime without supervisor authorization. The City also reminded the employees that working overtime without authorization could be considered "severe misconduct."

The Officers' lawsuit, based on the Fair Labor Standards Act, insisted that they must be paid for "time worked," whether the time was authorized or not, and whether or not there was a policy in place requiring authorization.

The City responded to the Complaint by conducting an internal affairs investigation to see what overtime hours had been worked without supervisor approval. The Police Officers filed a writ to block the investigation, looking to the Police Officers Bill of Rights for protection. The Court ordered the employees to cooperate with the investigation and ordered their union to pay one-half of the City's attorney's fees.



Here's a Good Question...

Question: I am thinking about retiring in a few years, but am concerned that my PERS payment could actually be lower than now if I wait. Could that happen if my Association agrees to a pay reduction in this year's bargaining?

ANSWER: In theory, it is possible. The parties **CANNOT** negotiate away any of your retirement benefit, but if they agree to lower pay **AND** you have the PERS option which averages your last three years of employment, your new lower rate can bring down the average. Most public employees, however, have the "highest single year" option, which means that a new, lower year won't affect your PERS payment. Also keep in mind that your PERS payment is calculated on either 12 or 36 MONTHS of earned money. It isn't based on the figure in place immediately after the signing of a contract.

Questions & Answers: Your Rights on the 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 Staff at the CEA office: 562-433-6983 or cea@cityemployees.net You **MUST** be an Association member & all conversations are confidential.



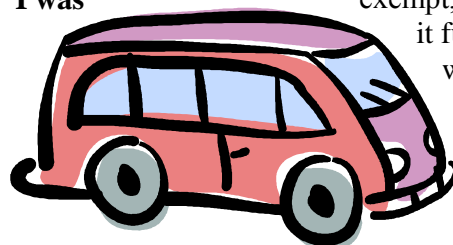
Question: Our office used to have four people in it, but now we are down to two. So, when my co-worker is sick or on vacation, I am alone and often have no choice but to work through lunch. My supervisor usually does try to relieve me, but she's often busy too.

One day last week, I worked through lunch and my supervisor came to relieve me at 3 p.m. At that point, I didn't bother going to "lunch" because my day ends at 4:30 anyway. Since I worked the extra hour, I put in for an hour of overtime, but my Department is trying not to pay me for it. Shouldn't I be paid for this hour?

Answer: Yes, you should be paid for the hour. The law requires that you be paid for all hours in excess of 40 in a workweek: this hour has already been worked and your supervisor clearly knew that you didn't take a lunch break when she came to relieve you at 3 p.m.

However, *in the future*, you need to make sure that your supervisor **KNOWS** that you are working through lunch. Your MOU probably says that overtime must be approved by Management in advance. Your "notice" could be something simple such as an e-mail to your supervisor that says, "It's p.m. and I haven't been relieved for lunch today. I don't want to close down the office, so will continue to work through lunch. If you don't want me to do this, please provide some direction..."

Question: I was in the vanpool on my way to work and we were in a car accident. I was hospitalized for several days, and have been off the job for nearly a month. Should this injury be covered by workers' comp?



Answer: If the vanpool is operated, or even coordinated, by the employer and you have not signed an agreement which relieves the City of liability, then your medical needs and lost wages should be covered by workers' compensation.

Question: I am a maintenance supervisor and don't receive overtime pay. Recently, though, I've been told that I have to be on "standby duty" with my subordinates because we are short-staffed. They all receive \$40 to \$60 a night, and I'll be receiving NOTHING! Can they do this to me? To make the insult even worse, we're being furloughed, so I'm off one Friday a month, but still must be available to work!

Answer: No, they **CANNOT** do this to you. Your rights are being violated, probably in three different ways. First of all, unless your MOU already has provisions for supervisors to work standby, this is a significant "change in terms and conditions of employment." The City cannot make this change without bargaining with you and your union (and if you're in the middle of a contract, you do not need to agree to bargain at all.) You may want to negotiate Standby Pay for your job class, similar to the benefit your subordinates receive.

Second, if you are being required to work "in the field," rather than simply supervising people who do this work, there is a good chance that your position should not be FLSA exempt. In other words, by putting you on standby the City may have inadvertently violated your exemption and turned you into a "worker bee..."

Third, even if you position **IS** properly designated "exempt," the City loses that exemption when it furloughs you. If exempt employees work more than 40 hours during a furlough week, they must be paid overtime for the hours over 40. If you are truly on standby (meaning that you **MUST** respond to call-outs,

cannot leave the area and must be in “work-ready” condition during non-work hours) then this time is considered work time – every hour after 40 in a week!

Question: I dyed my hair purple a couple of months ago. No one has complained, and no one really even notices any longer. However, Management has suddenly told me that I must conceal it. I looked at the dress policy and there is nothing prohibiting bright-colored hair. In the spirit of cooperation, I have concealed it, but I would prefer not to. It’s MY hair. I think it looks attractive and many people have complimented it. I want to know if I must follow management’s directive.

Answer: Public agencies do have the right to establish standards for appropriate appearance, especially if you interact with the public. If the dress code currently doesn’t address the question of bright-colored hair, you might win the battle (temporarily) but later, lose the war. The dress code CAN BE modified to include your situation, and in the meantime, your Management is likely to be pretty irritated with you.

This situation is not too different from the issue of tattoos, which many dress codes now address. Management cannot tell you that you “can’t have” a tattoo or purple hair, but they can tell you that you can’t display them while you’re on the job.



authorized to tell me when to take my lunch or who to take it with? Can he require us to take our lunches at different times?

Answer: Your supervisor DOES NOT have the right to tell you who you can or cannot socialize with on your own (unpaid) lunch time. But he DOES have the right to tell you (and her) when you can go to lunch. It might be worth your trouble to ask why he doesn’t want you going to lunch with the other employee...

Question: I asked our Personnel Department to remove an old disciplinary letter from my file. The MOU allows for this, once the material is three years old. The City sent me a letter, agreeing to remove the document. The letter identified me – and the document -- by name, and went to my current supervisor, along with half-a-dozen other management personnel.

Further, the new letter was then submitted to my personnel file!

This is absurd. I want this new letter removed from my file and a retraction sent to all the other parties. How do I accomplish this?

Answer: You should contact the Personnel Department, and request that this new letter be removed from the file. If they won’t cooperate, call your Association staff. Don’t expect a “retraction,” though. The City is unlikely to do anything except agree that someone made a technical error. If it’s any consolation, this whole incident probably matters far more to you than to anyone else...

Question: “I’m a working supervisor and have just been told that my job class is being made “exempt” and I won’t be receiving overtime pay anymore. Does this mean that when I’m called out in the middle of the night to oversee an emergency, I won’t get Call Out pay anymore?”

Answer: NO! Call-out pay is a free-standing negotiated benefit. If it’s in your MOU and you have been receiving it, you should continue to, regardless of your FLSA status. Although the normal value of “a call-out” is a minimum of two hours’ at time-and-a-half, it has nothing to do with overtime.

Unless your MOU provision on Call-Out specifically excludes exempt employees, this benefit is intended to compensate any employee for the inconvenience of coming to work in the middle of the night.

Question: How should I go about telling the City that I am going to need to take quite a bit of time off to care for my husband, who will be undergoing spinal surgery?

Answer: You just need to tell them: both your supervisor and the Human Resources Department. They will give you the paperwork for Family Medical Leave (FMLA) which will need to be supported by a note from your husband’s doctor. After that, you’ll have the right to take up to 12 weeks of leave (intermittently, if necessary) without jeopardy to your job.

Question: Yesterday my supervisor told me that he does not want me to take my lunch breaks with another employee in our office. I am a full-time employee and she is part-time. We don’t supervise the same areas, and both get a one-hour break, which we can take whenever we want. Is he

