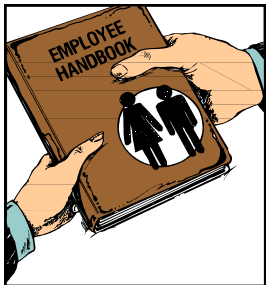


Glendale City Employees Association January 2008 News



Most employee association members know that they are “covered” by an MOU (Memorandum of Understanding). This means that they elect leaders who “go to the table” to bargain every few years, at the end of which everyone votes on a new MOU. When most members think of “bargaining,” they think of “pay raise” – and maybe a higher boot allowance or medical contribution or retirement plan.

What most members do not realize, however, is the extent to which **the MOU is an enforceable CONTRACT,**

Your right to ‘bargain collectively’ was established in 1968 with the Meyers-Milias-Brown Act (MMBA.) Over the years, lawsuits have fleshed out the meaning of law, so there is

What IS an “MOU,” Anyway?

which compels the City to bargain with your Association prior to ANY change in “wage, hours and other terms and conditions of employment.” In other words, the Contract is the only *legal* reason that your employer cannot take a wide variety of actions -- from changing your job description to “revising” the Personnel Rules to replacing you with ‘part-time’ labor. In other words, you do have the ability to “just say no...”

Until recently, employees associations rarely exercised the full power of their MOU’s because enforcement was so difficult: if the City did not agree with our point of view, the only recourse was through Court, which takes many months and many dollars. But, with the passage of SB739 in 2001, cities, counties and

special districts came under the jurisdiction of the Public Employment Relations Board (PERB). This means that even small organizations may bring their “unfair practice” claims before a state hearing officer, within a few months time, at no cost at all.

Now that we have some ability to really *enforce* your contract, it might be useful to look closely at what it really says. Here, therefore, is a summary of major components of *most* public sector MOU’s. Please keep in mind, however, that Contracts can vary a great deal from agency to agency. If you have specific questions, feel free to call your Board or our professional staff at 562-433-6983 or email:

cea01@charter.net.



now general agreement on 1) which employees can be covered by a contract; 2) how those employees may be grouped into “bargaining units;” 3) how unions achieve the right to represent them; 4) what

subjects are within the “scope” of bargaining; 5) how the contract can be enforced (and when it can be challenged; what happens when it expires, what happens when bargaining breaks down, etc.)

The Courts have established some fundamentals: *any* public employee can be “represented,” even confidential employees, even managers. The MOU has higher authority than any *other City rules*, except a Charter. It cannot be overturned by a vote of the public. It must be honored, even if the employer has financial crisis. If it expires, the ‘terms and conditions’ remain in force, until a new agreement is reached.

The right to bargain extends to *all* City rules -- even departmental rules, even rules which are not written down (“past practices.”) So long as your MOU has a “zipper clause” (a provision which says that the MOU represents the totality of agreements between the Association and the City and that neither party can be compelled to bargain until it expires...) the City cannot change “wages, hours or terms and condition of employment” – unless specific exclusions are identified in the MOU.

The MMBA does not mandate what subjects are included in the MOU; but it does mandate that any aspect of “wages, hours and terms and conditions of employment” may be negotiated. This is the case even when the City may tell you that that subject is a “Management Right.”

The “Management Rights” clause usually says something to the effect that “the City can do whatever it wants to or needs to, in order to provide service to the public” – and it is often used to bully the Association into giving up its right to bargain on a particular topic, or to prevent the Association from objecting when the City is about to take some detrimental action. Thus, it may be valuable to know that “It’s a Management Right” usually does not mean anything at all, as long as you have other MOU language on similar subjects.

For example, the Management Rights Clause probably says “the City has the right to assign duties” but *other* sections of the MOU refer

to job specifications or out-of-class assignments. Or, the Management Rights clause says “the City shall define hours of work” but *other* sections of the MOU detail the work schedules.....*These other sections hold priority*: the City cannot change job descriptions or work hours without bargaining!

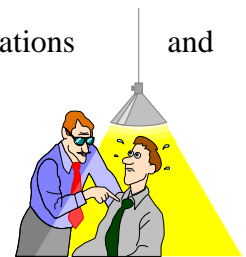
The City may also tell you that you cannot bargain on matters covered by other employment laws. This is patently false. Even if there are existing laws, and even if the laws change, you may negotiate over these. Thus, you may bargain for full pay for injured workers (although the state requires only about 2/3rds pay.) Or you may negotiate the right to use (or *not* use) Sick Leave and Vacation during FMLA time. (The law does not address this issue at all.)

Similarly, when state or federal law changes, and the City tells you that it must comply, your Association retains the right to bargain, if the new law will change your work conditions. For example, the Courts have recently reminded public employers that they **MUST** negotiate with their employees before implementing Commercial license requirements, Water Testing certifications and random drug testing.

Unfair Bargaining...

Of course, the *right* to bargain and the *power* to see your proposals enacted in a written contract, are two different things. Public employee unions are truly only as strong as 1) their membership, and 2) their political connections. However, the MMBA does require that the employer bargain fairly. Some of the more common “unfair bargaining practices” which we may now take to PERB include surface bargaining, regressive bargaining, direct dealing, conditioning bargaining on the waiver of rights, retaliation against union members, unilateral changes, etc.

“Recognition.” The MMBA protects your right to join the organization which represents you -- without retaliation. It requires the City to allow time off the job for “a reasonable number of representatives” to participate in contract negotiations. It grants your association the right use City facilities for meetings, City bulletin boards for communications and now,



thanks to recent legal action, City email. It requires the employer to cooperate with dues deductions, and since January 2001, to enforce member-approved Agency Shop agreements.

More significantly, however, it allows your group to be *recognized* as the “exclusive representative” of a set of job classes, which are specifically defined by a list of job duties. In the old days, the “recognition” clause was called the “union security” clause of the Contract. It *secured* the benefits of those who were inside union’s jurisdiction – and tried to make sure that these were NOT extended to those on “the outside.”

In the old days, the “Union Security” clause was how we protected the union from be “being busted” by giving our work to “scabs.” Nowadays, however, public employees have gotten so used to seeing their jobs slowly filled by “at will” or “part-time labor” that they have mostly forgotten the function of the “Recognition” clause! It’s still there, though, and now that associations have some enforcement power, they may want to look at this again at this language...

Speaking of enforcement, it is essential to understand the role of your Grievance Procedure. Most people think of a “grievance” as papers an employee files because he’s a bit of a complainer. Or maybe you might agree that there ARE times when somebody’s been mistreated, but that a grievance is such an aggressive or legalistic approach... Please consider this, however: the grievance process is not only for individual employees; it is the only “in-house” mechanism your *organization* has for making sure its MOU is not broken, ignored or eroded.

An organization that fails to grieve violations of any member’s rights is in danger of allowing those rights to be “waived” for everyone. This is the reason that the association’s right to file grievances “in its own name” is protected, under the MMBA, a “mandatory subject of bargaining.”

A good grievance process will allow you, or your organization, to go ‘up the chain of command,’ ultimately

to a professional arbitrator. A weaker procedure will “top out” with a Personnel Board or Civil Service Commission, populated by well-intended laypeople who owe their allegiance to the Council. Still weaker procedures lead only to a hearing in front of the City Manager.

Unlike “Skelly” (pre-disciplinary) rights, the law does not require that your grievance procedure be a fair one. (In fact, the law doesn’t *require* a grievance procedure at all.) However, if the Association can argue that the Contract violation which you are grieving constitutes a “unilateral change in terms and conditions” (change made by the employer without bargaining) you may be able to take your case to PERB. PERB does not require that you complete the local grievance process, by the way, unless your MOU provides for *binding arbitration of grievances*. (Most don’t...)

Lest you think this whole process sound either far-fetched or painfully legalistic, please consider that the number of PERB cases has quadrupled since cities, counties and water districts came under its jurisdiction in July 2001. This means that, on the average one out of every four associations in the state now have a case before PERB!

A “unilateral modification” could be a simple as your City’s attempt to rewrite your job description or as sweeping as an unnegotiated change in the medical plan. Recent PERB cases by CEA staff have involved one City’s attempt to exclude probationary employees from agreed-upon salary adjustments, another’s failure to meet and confer prior to implementing layoffs, another’s attempt to “revise” the Personnel Rules without bargaining, and still another’s sudden discontinuation of an “employee rewards” program. These are not complicated scenarios -- not unusual at all!

Ultimately, the right to bargain and to enforce your MOU lie in the hands of your employee association leadership. Now that these rights have a bit more punch, however, we encourage you to use them -- next time the City decides to “just reorganize a few little things” without asking you.





What the Department of Transportation REALLY Says About Drug Testing....

Although it has been a dozen years since the Federal Department of Transportation mandated "regular, random substance testing" for employees in "safety sensitive positions" there is still a great deal of controversy about what the Feds REALLY require. Not only are many aspects of the *federal* guidelines negotiable when it comes to *local* implementation, but many local policies seem to be expanding in scope (*without bargaining!*) as time marches on. The purpose of this article is to tell you exactly what the law really requires. Keep in mind, though, that each agency is unique and policies may change as the result of new bargaining...

The Basics...

First of all, drug or alcohol testing of ANY non-sworn public employee is considered by the Supreme Court as an illegal invasion of privacy (unless a policy allowing for such is negotiated.) In the mid-'90s the Department of Transportation mandated public employers to establish policies requiring regular, random testing for public employees who hold a commercial Class A or B license *which is used in conjunction with their employment*. "Commercial" refers to the size of the vehicle: over 26,000 pounds.

When local cities and water districts began negotiating these policies, they frequently tried to encompass a wider range of employees under the "DOT net" than the law required. If your Association bargained well, you clarified that **not all employees who hold Class A or B licenses are subject to testing**. Nor are all those employees in job classes requiring the licenses subject to testing. The law requires that only those who both HOLD the licenses and *MIGHT DRIVE* the vehicles can have their privacy randomly invaded. There is no minimum frequency of driving heavy vehicles that might make you more subject to testing than someone else. For example, a mechanic who might drive a bus only to test the brakes is as subject to regular, random testing as someone who drives a bus all day long.

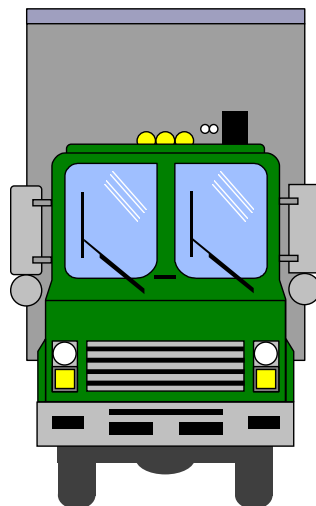
The federal guidelines set a minimum number of tests per year. These tests may occur at any time while the employee is on duty, and the law does not address the method for determining "randomness." 50% of the eligible workforce must be tested each year, so people who drive heavy vehicles for public agencies are frequently going to be substance-tested.

The Effects...

The law does not address HOW employees should be tested, nor does it address (except in broad terms) how an employee who tests "dirty" shall be treated. One of the major subjects of DOT policy negotiations used to be the validity of the testing procedure, the possibility of "false positives" and the employee's right to demand re-testing. Over the years, testing procedures have been improved, and are rarely found to be "tainted" any longer. Also, most employers allow for re-testing and will accept plausible explanations for "false positives."

Also, over the years, safety-sensitive employees have accepted necessity to report legal prescriptions for drugs that could trigger a positive substance reading.

Potential Discipline. Employees who are disciplined for DOT violations do not waive their "Skelly" rights. The hearing process gives the parties the opportunity to get to the truth of a situation *before* discipline can be imposed. If an employee has been found to drug or alcohol in his system, while on the job, he may be



disciplined and/or offered some agreed-upon "last chance contract." The law require that an employee who "tests dirty" be disallowed from driving a heavy vehicle that day. But it does not prevent him from doing other work, nor does it require that he be "punished."

If anything, the Department of Transportation leans in the direction of counseling. Employers must refer

all employees who test positive to a drug or alcohol rehabilitation program. In most cases, employers require employees who test positive, to be tested more frequently as a condition of continued employment. This enable employees to keep their jobs, while helping to guarantee that an employee with a drug or alcohol problem probably won't be driving a heavy vehicle in the future...

The "Health Care Portability Act:" How it Affects You

Not much attention was paid when former President Clinton first signed the "Health Insurance Portability and Accountability Act of 1996." However, this law made sweeping changes to the health insurance industry, most of which are insignificant to the average consumer, but some of which affect working people right now. Here is a summary:



Job to Job Portability - When employees change jobs, sometimes there is a waiting period (up to a year) to secure coverage for pre-existing illnesses or medical conditions. The new law says that, if a worker was covered under a plan at the prior job, then the new insurance must cover the condition. (There are some time restrictions, however.) In the past, some workers have been trapped in a bad job, because they could not afford to go without health coverage. Others have found out too late, after they changed jobs, that their medical problem was not going to be covered. This provision should end that.

Insurance Company Availability - Some workers for small employers have been denied insurance altogether due to a medical condition. Insurance companies will no longer be able to do this. If the insurance company is in the market, it must take all applications.

Guaranteed Renewability - In the past, some insurers have withdrawn their coverage because of bad experience with an employer or an individual. Under this law, the insurer must permit employers and individual employees to renew, so long as they have paid their premiums.

There is much more to the portability law, including national health data bases and a new agency to investigate fraud and abuse, but the three items above are the ones most likely to affect you.

QUESTIONS AND ANSWERS: YOUR RIGHTS ON THE JOB

The following are **GENERAL** answers to employee questions. If you have a unique problem, feel free to talk to your Board Rep or Association Staff.

QUESTION: I was assigned to do work in an attic of an old building. The attic was full of dust, which I think may be asbestos. My boss ordered me to do the work now, and analyze later. What should I do?



ANSWER: There is really only one instance in which you need not do what your supervisor orders, and that is when you, or someone else, may be physically endangered. If you've reported the possible asbestos, and your boss still tells you to work in it, he is endangering your life. Don't work in the attic until you're certain that it's safe; and call your staff person to file a grievance. We will call upper Management immediately. One word of warning, though: *Don't go over your boss's head alone.* Have a representative or a witness present.

In general, you have the right to refuse work that is dangerous, but you should be prepared to provide evidence of the danger. Make sure that you report the problem, and have some witness to that, if possible. You don't want to leave yourself open to accusations of insubordination for refusing to obey an order.

QUESTION: I was told that I couldn't call the Association for help with a problem until I had gone up the 'chain of command' in my department. Is this true?

ANSWER: Absolutely not. You can call your rep at any time with any labor relations matter. This right is guaranteed by state law. The law also protects you against retaliation for exercising that right, by the way.

Your department has the wrong attitude if they expect you to 'fight grievances out.' The professional rep has the goal of resolving problems, not worsening them. Grievance processes were originally established by *Management* as means of solving problems 'in-house.' Without productive use of grievance processes employees and employers often simply end up in court.

QUESTION: I hurt my back at work, and have been off the job for several weeks. The doctor says I can return to work but no lifting or bending. But the City says they have no work for me. Don't they have to give me modified duty?

ANSWER: If your job normally requires bending and lifting, the City would have to "modify" the job to let you do it - and they are under no legal obligation to do this. However, if your injury was clearly work related, and you clearly will return to your job eventually, most employers would rather give you modified work than pay you to stay home, (which is what they must do by law.)



You certainly have the right to ask questions and, if denied modified work, that others (with similar injuries) have been granted; you may have the right to grieve. Before filing a grievance, call your Association representative. Workers Comp is a complex field; we may need to resolve your problem at a higher level of City Management. We may also have to send you to a workers comp attorney, if you have a permanent injury.

QUESTION: Apparently somebody in our crew has been stealing materials. My supervisor called me in, cross-examined me, and then said, "I'll be getting to you later." I haven't done anything wrong! How can I clear myself? Isn't this harassment?

ANSWER: If you haven't been formally accused, no discipline can befall you - and you really don't need to "clear yourself." You may want to write the supervisor a note stating that you are upset at being accused; but we suggest letting the action end there. No real "remedy" could be achieved by processing a formal complaint - unless this scenario repeats itself.



If it **DOES** repeat, however, you may want to talk to your representative about filing a harassment grievance.