



Glendale City Employees Association

September 2009 News

CONTRACT NEGOTIATIONS UPDATE

The new MOU was ratified last month, with a strong showing of support. Out of 810 voting members, 550 members voted in support. The vote constitutes a clear 2/3 of the voting membership required under our Bylaws. City Council subsequently ratified the Contract on August 18th, and it is now in force.

The Negotiations Team wants to thank everyone for their support in this very, very tough year. The new MOU secures our members pay and benefits for at least another year, and blocks the City from imposing furloughs for the term of this contract. This, along with a few small improvements in language and benefits, will help us avoid “takeaways” during these unstable economic times.

Thanks to everyone for your careful consideration and support!

The Retirement Conundrum Robin Nahin, Association Staff



Is it true that the Public Employee Retirement System has lost so much money that it has become “unstable?” Is it possible that the System won’t be able to pay back your City’s investment when the time comes for YOU to retire?

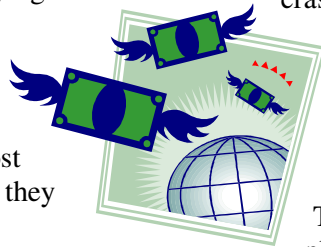
The answer is an absolute NO on both accounts. But it IS true that PERS (and ALL public employee retirement systems) is *now* much more expensive for your employer. How are already-strapped public agencies going to pay for this expense? This is going to be a dilemma for all of us -- and we need to start thinking about it. Here are some crucial facts:

When CalPERS was set up two generations ago, it was designed to be mutually funded, by **both** employers and employees. Employees contributed 7% of their pay

and their agencies matched this with an amount that was “experienced rated.” (This means that the amount goes up and down, depending on how much money

piles up in your city's account and how much is spent when employees retire. Employer rates have been as low as zero and as high as 15% for non-sworn employees. For Police and Fire, they have soared as high as 35%.)

In the 1980's, public agencies began paying BOTH SIDES of your PERS contribution. This wasn't out of the kindness of their hearts. It was because PERS allowed them to defer their monthly payments if they paid both parts of the expense. Most agencies took advantage of this because they were able to make a profit by deferring contributions and investing the money. The '80s, don't forget, was an era of double-digit inflation... Today, most employees don't realize that there IS an employee contribution to their retirement plan, nor do they have any idea what their cities are paying for retirement on their behalf. This is largely because, for most of the last twenty years, PERS costs were steadily dropping. In fact, **from the mid-90's till the early 2000's, most cities were paying nothing** in PERS contributions! How did this happen? Well, it's all about the stock market – as is the mess we're in now.



Remember “Superfunding?”

“Superfunding” was the term PERS actuaries used to tell public agencies that they owed NO retirement contributions. It specifically meant that there was so much money in their PERS accounts that all retirees could be supported for the next 999 years! Most of this money did NOT come from employers' contributions; it came from PERS' skilled investment of those initial contributions in the stock market. Thus, this time last year, PERS was boasting that 75% of the cost of your retirement would be paid *by the money PERS made on its money*, rather than by you or your employer.



With the “Dot-Com bust” of the early 2000's, investments went down, superfunding suddenly flew out the window, and cities began making (small) PERS contributions again. At the same time, most unions began pressing hard for upgrades in their retirement plans. The 2.5% and 2.7% @ 55; the 3% @ 60 plans had become available as the result of 1996 legislation. Most (but not all) agencies agreed to upgrades and, although many employees absorbed *some* of the costs for a while, the primary burden was born by the public agencies.

The increased costs of these upgrades generally ran between 2% and 8% of *your* salary. But most agencies that have Police and Fire Departments *also* agreed to

upgrade *those* employees to the “3% @ 50” plan. Within just a few years, the higher costs of *these* benefits were running 25% to 35%!

WHERE DID ALL THE MONEY GO?

So, you know what happened next? The stock market crashed at the end of 2008 – and the grand “excess” in the cities' PERS funds went the same way as private 401K plans: into the ether. There is HUGE difference, however: **You are guaranteed your negotiated retirement benefit.** Private employees are not.

Thus, if your City contracts for the “2.5% @ 55” plan, you **WILL** receive 2.5% of your last year's pay (or average of the last three), multiplied by the number of years you worked there *for the rest of your life*. Your retirement benefit is protected by law – even if the stock market collapses. This is what differentiates a “defined benefit plan” from a private company's 401K's: no individual's retirement fund is at stake.

Obviously, though, there are huge consequences to the CalPERS fund when the value of its investments falls by 40%. **The most immediate consequence is that employers' rates will start rising - fast.** This is really bad news to public agencies that are already being impacted by the recession AND by the massive “take back” of funds from the state.

Further, when the PERS rates go up, *on top of all the City's other problems*, it won't be long before two **other** consequences erupt: 1) the City brings this problem to your bargaining table, in the form of some sort of cost-cutting measure, and 2) the angry, crazy anti-employee forces trying to influence political debate become even more angry and crazy in their attempts to destroy your retirement program.

WHEN POLITICIANS JUMP ON THE BANDWAGON...

When these two developments collide, which they're doing especially in San Diego and Orange Counties, employee benefits are in trouble. City Council people start spouting ideas about making employees “pay their own fair share” of benefits or about how “unfunded liabilities” (future benefits costs) are a “ticking time bomb” about to explode any minute under the Mayor's podium. On the local level, this could mean an attempts to:



- 1) **make employees pay larger portions of their own PERS contributions;**
- 2) **force new employees into lower-tier plans;**

- 3) do away with the “last best year” retirement calculation;
- 4) hire employees *outside* the PERS system; or
- 5) reduce or eliminate retiree health care benefits, even for current employees.

On the state level, all sorts of crazy schemes may be coming up as voter initiatives: capping retirement incomes on public employees making more than \$40,000; reverting to pre-1990’s benefit levels (the 2% @ 60 for non-sworn employees;) a forced increase of the retirement age (to 65 for non-sworn employees; 58 for police and fire;) taxing retirement incomes, etc.

Although the courts would likely find that most of these ideas are unconstitutional, in violation of the “Contracts Clause” (after all, these benefits are negotiated...) there is no question that the rising cost of retirement is both REAL and coming to greater consciousness in the minds of the tax payers.

In other words, the subject of retirement “takeaways” will probably be unavoidable in contract negotiations over the next few years. This means that your Association needs to be thinking ahead *now* about possible responses, and quite possibly be explaining its positions to local leaders. For example:

What Happens When Older Employees Can’t Retire?

Will the City’s workers comp rates go up if employees are forced to work into old age? *Of course*. Will skilled, younger employees look for jobs in other venues because there are no promotional opportunities? *Of course*. Will the cities health insurance rates rise due to the higher costs of older employees? Depending on your plan, *very likely*.



What Happens If Public Employees’ Retirement Income is Reduced?

Will they be able to sustain decent lifestyles? Forced to sell their homes or leave their communities? After all public employees are the last bastion of the middle class in many communities. Many live in the same cities where they work. **What happens to local economies when more and more middle-class residents are reduced to poverty?**

Most public employees do NOT make exorbitant incomes to begin with. The average, for non-sworn, non-management workers is under \$50,000. What really IS terrible about his receiving 60%, 70% or even

80% of this after a LIFETIME of public service? Isn’t this what ALL employees strive for?



What “Takeaways” Can’t They Ever Take?

Finally, it’s important to remember that some “takeaways” violate your rights under the law, and should not be considered under *any* circumstance.

These include the involuntary losses of any retirement monies or choices for current employees.

Unless your Union negotiates another benefit of “equal value” (which is unlikely,) the City can neither change your retiree health care plan, nor reduce the benefits, nor reduce the amount they pay for the plan.

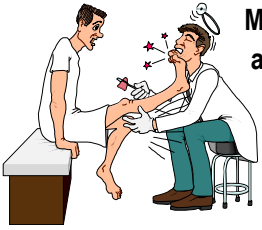
The courts have ruled repeatedly that retirement benefits for *current* employees are a form of deferred compensation. Your union couldn’t give these up if it wanted to. This is why so many MOU’s are peppered with “two-tiered systems” for new employees...

The other loss which you do not have to tolerate is any attempt by the City to circumvent PERS by hiring temporary or part-time workers. First of all, since 1982, PERS has had a “1000-hour rule,” which means that ALL employees go into the system when they cross 1040 cumulative hours of employment. A few cities have exemptions to this rule, but not many. If the City tries to avoid this rule by hiring a succession of part-timers and moving them in-and-out of the workforce, your Association has the right to grieve; this practice clearly violates the “union security” clause of your MOU, which protects the duties of your job classification from being assigned to non-bargaining unit labor.

Overall, public employee unions facing takeaways in the health care arena are going to need to be well-educated about their rights and well-connected to their local leaders. Unless Management is truly attempting to violate those rights, or to benefit one group of employees at the expense of another, it is always better to collaborate democratically and intelligently than to try to “slug it out” in the face of plunging revenues and rising costs.



FITNESS FOR DUTY EXAMS: WHEN CAN THE CITY SEND YOU TO A DOCTOR?



Most people are surprised to find out that your employer **CAN** send you for a medical or psychiatric exam as a condition of continued employment. Both state and federal law allow these exams when the employer can show that its inquiry about your condition is job related and consistent with business necessity. This means that an exam can be triggered for your out-of-the-ordinary behavior, or for your employer's reasonable belief that you may no longer be able perform the duties of your job.

The Equal Employment Opportunity Commission (EEOC) says that your employer can send you for a “fitness for duty exam” if it has a “reasonable belief, based on objective evidence, that: (1) an employee’s ability to perform essential job functions will be impaired by a medical condition, or (2) an employee will pose a direct threat due to a medical condition.” Some examples might be:

- 1) Outbursts of inappropriate language or behavior;
- 2) Threats of violence or intimidation;
- 3) Excessive absences, especially stress related absences;
- 4) Inability to interact with co-workers without constant arguments, etc.



The City must pay for the exam, and *can* send you to the doctor of *their* choice. The exam cannot over-reach by invading your medical right to privacy under the California Confidentiality of Medical Information Act (CMIA). In fact, an employer is prohibited from using medical information obtained from the exam “that is not necessary for determining eligibility for paid and unpaid medical leave” without a signed authorization from the patient.

Further, regulations under the California Fair Employment and Housing Act (FEHA) and Americans with Disabilities Act (ADA) may apply, especially if he or she is disabled, or *perceived* as being disabled by the employer. A complex set of rules must then be followed to determine whether s/he is, or is not, disabled and what accommodations can be made.

The City’s doctor may make job-related recommendations based on his findings from the exam. But this does NOT mean that the City can act upon these recommendations without your agreement or permission. This is particularly true if the recommendations would impact your pay, your job class, or your current or future employment. There is a huge difference between the City’s ability to send you for work-related counseling or assistance and the City’s ability to demote, reclassify, or fire you!

If your Department believes, for example, that you’ve had one too many arguments with co-workers or too many crying jags at your desk, it can send you to a doctor, who might recommend anger management classes or appointments with a counselor from the EAP (Employee Assistance Program.) Although you certainly have the right to object, refuse, or file a grievance, it’s generally best to comply. The law doesn’t consider such referrals “discipline.” You have no right to a hearing because you have not experienced any loss of pay or job status. From the City’s point of view, they are advising you that *they think you have a correctible problem*, but that lack of cooperation *could* lead to discipline.

The City must pay for any such program and the information gathered there is strictly confidential. The only exception is where an employee is required to see a substance abuse professional as a condition of employment due to drug- or alcohol-related discipline. That professional may report back to your employer.

WHEN YOU DO HAVE THE RIGHT TO A HEARING

On the other hand, you have the absolute right to appeal if a doctor recommends that you be removed from your job, reclassified, demoted, reduced in hours, or terminated, you have the absolute right to appeal this. In fact, if the proposed action includes loss of pay or job status, your “Skelly Rights” can include a full



evidentiary hearing, before a “reasonably impartial third party.” (This right stems from a lawsuit brought in the mid-80’s by a female Police Officer against the City of Hawthorne. When the City wanted to terminate her, they didn’t have evidence to win a discipline case, so the City sent her to a doctor who found that she was “mentally ill.” The City then terminated her without a hearing. The officer sued, produced her *own* medical evidence, and helped establish important legal precedent: that even disabled employees -- or allegedly disabled employees -- have the right to “Skelly due process” before the City can take their pay or their jobs.

You have the right to challenge the City’s doctor’s recommendations, not only via the Disciplinary Appeals procedure, but also under the Americans with Disabilities Act. This is true regardless of whether the employee’s “impairment” is mental or physical.



OTHER DISCIPLINE... THERAPY ISN'T CONSIDERED DISCIPLINE...

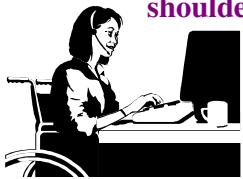
Although it’s easy to interpret being involuntarily sent to a doctor or therapist as “punishment,” if there is no loss of job or pay, the City has the right to make this referral. In truth, this can be a blessing in disguise. Sometimes people are unaware of how much their stress, or their physical ailments, affect their behavior on the job. Sometimes they do not even realize that they are ill. Illnesses often first manifests at the workplace because we spend the bulk of our waking hours there, and we are under the watchful eye of so many people. Over the last few decades, public workplaces have made great progress in recognizing illnesses, addictions, and disabilities in the workplace. In general, their first step is to provide assistance, rather than of punitive action.

A Key Amendment to the Americans with Disabilities Act

The Americans with Disabilities Act (“ADA”) is a federal law that protects disabled workers against discrimination based on their disability. Under the ADA, if an employee becomes disabled while employed, the employer must engage in a good faith interactive process in order to reasonably accommodate the employee’s disability. Accommodations may include restructuring a job, modifying work schedules, reassignment to a vacant position or providing special equipment or devices. Whether a particular accommodation is *reasonable* depends on the disabled employee’s circumstances and whether the accommodation would place an “undue hardship” on the employer.

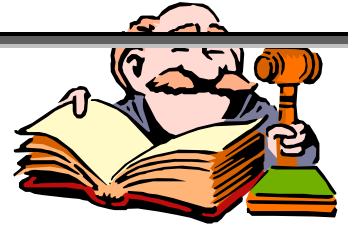
Recent Congressional amendments, effective January 1, 2009, reversed US Supreme Court rulings that had excluded many workers from the statute’s coverage. On the whole, these amendments have greatly strengthened the rights of disabled employees. A worker who was previously excluded from the ADA’s protections may now be covered and entitled to a reasonable accommodation prior to being terminated. For example, an employee with a vision problem may now be considered “disabled” even though his disability may be “relieved” with eyeglasses.

City and utility employees OFTEN do work that is hazardous. People are injured. A significant number of these injuries result in permanent disabilities. Even clerical staff have a high incidence of hand- and shoulder-related disability. Each new decision on the ADA is another step compelling public agencies to take decent care of their injured employees. Today, the agency which fails to make a genuine effort to provide continued employment for disabled workers will be subject to serious legal penalties.



If you feel you have been discriminated against because of your disability, contact the U.S. Equal Employment Opportunity Commission (“EEOC”) or California’s Department of Fair Employment and Housing (“DFEH”) to file a charge of discrimination. If you have questions about whether you have a

Major Legal Decisions



The following are some major legal decisions, which improve the rights of public employees in California. Please keep in mind, though, that each employee's situation may be different. If you have a question or problem, please contact your Board.

Terminating Female Employees for Breastfeeding May be Considered Gender Discrimination

After returning to work early in her maternity leave, *at the request of her supervisor*, a female employee nursed her baby in the car during her break time. After a few work shifts, her supervisor advised her that the practice was unacceptable and that she could not return to work again until she had "ceased lactating." The employee objected, insisting that she was fully able to work. The supervisor responded that she was no longer needed and fired her.

The employee filed a claim with the DFEH for gender discrimination. DFEH found that:

1. The employer failed to return the employee to her position after FMLA leave, as required by law.
2. The employer improperly fired her on the basis of sex discrimination; and
3. The employer retaliated against her for exercising her rights under the law.

Retiree Benefits Can't Be Changed Without Bargaining

In 2007 Sacramento County adopted a policy which eliminated retirement health benefits for anyone who retired after May 31, 2007. They only made one serious error: they forgot to negotiate with the unions. Those unions filed a PERB charge against the County for its "unilateral change of the terms and conditions of employment." The Administrative Law Judge ruled that the topic of retirement was a mandatory subject of bargaining. The County was ordered to reinstate the benefit until/unless the unions agreed to the change.

PERB Affirms the Right of Access To Worksites for Union Meetings

When two union representatives entered a transit department break room to talk to employees and hand out flyers, agency management escorted them out of the facility. The union filed an unfair labor practice charge with PERB, on the grounds that the union has the right to communicate with members at the workplace, as long as this is not during the normal workday.

PERB agreed, and ruled that the that Meyers-Milias-Brown Act grants a recognized employee organization the "right of access" to public agencies for the purposes of communicating with members. Since the union was only using the break room, the employer's right to do business was not affected.

New Regulations Regarding Gifts To Public Officials

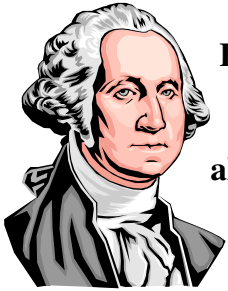
Following the discovery that the Orange County Fair Board of Directors made substantial gifts to itself and other public officials in the form of Fair passes, the State Fair Political Practices Commission issued new rules on gifts. Now, all such passes (defined as ticket for admission to a facility, event, show, or performance for an entertainment, amusement or recreational facility) must be reported as gifts to the employer except:

1. If the ticket or pass is to allow the official access to a ceremony or function in which the official has an active role on behalf of his agency; or
2. The ticket or pass is treated as income by the recipient and the employer and is taxed as such.



The new FPPC rules also require public agencies to adopt their OWN written policies regarding the distribution of passes or tickets to officials.

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 Association Staff. There is no charge to Association members and all conversations are confidential.

Question: Could a regular, full time employee be required to train a contract employee in areas outside his contracted job? For example, if a contract employee is specifically hired to do the mail, could an Admin Assistant be required to train the contract employee on HER desk?

Answer: Management has the right to assign job tasks to employees, subject only to legal restrictions and/or those spelled out in the MOU, if applicable. Those tasks may include asking an employee to train a fellow employee on issues related to job performance. It doesn't matter whether the "trainee" is a regular employee or a contract employee.

There MAY be an issue, however, if the contract employee is asked to perform your job – or other "bargaining unit work." The City cannot give union jobs to contractors (except to fill in as temps for short time periods) unless your Association agrees. If you believe that management is really hiring a contract employee to do work normally done by permanent employees, comply with the City's direction to do the training, but you may also want to report this your Board of Directors or staff at the CEA office. Your Union may want to take action!

Question: My three co-workers and I rotate a Saturday work schedule. In other words, we each work one Saturday a month. In the week that we work the Saturday, we are required to take a Monday off, so the City isn't forced to pay overtime. I want to know if this is a violation of the FLSA?

Answer: The FLSA is a federal law that protects covered employees from wage and hour violations, such as being denied overtime pay. Assuming that you're in a job class that makes you eligible for overtime, Management cannot make *sudden* changes in your schedule in order to avoid paying you overtime.

This does NOT sound like an example of "sudden change" of schedule, though. It's legal for the City to

give you a *regular schedule* that involves weekend work, even if this includes a Monday off once a month.

Question: If I am called in to work during my vacation, do I receive overtime pay?

Answer: Nothing *in the law* would require the City to have to pay you overtime for coming into work during your vacation. However, your MOU may address this, and may provide overtime pay.

The City really shouldn't be bothering you during your vacation! But we live in difficult times, and if they really need you, you have every right to request some extra pay for the effort. Your vacation time should also be restored for that day (or days).



Question: I was injured at work and was hospitalized. I had designated my personal doctor as my medical professional, and the City had acknowledged this. Today, however, the City's insurance carrier sent me a letter, directing me to see their doctor. I want to know if they can require me to do this?

Also, when I see their doctor, will I be using my own time or will this be considered paid work time?

Should I retain an attorney? My injury should be healed soon. I'm told that therapy will be needed, although I'll have no permanent disability. I do not trust the city to look after my interests, however.

Answer: If your doctor was on file with the City prior to the injury, then the City cannot force you to *be treated* by their doctor, but the workers comp insurer can require you to be *evaluated* by their doctor. This is an unavoidable part of the investigation of your claim.

The City can also require you to see their doctor prior to returning to work, if there is any question about your ability to perform the "full range of duties." You should be on paid status (or injured-on-duty status) for either kind of appointment.

Unless either 1) your workers comp claim is denied or 2) your injury turns out to be so severe that you *will* have a permanent disability, you probably don't need an attorney. You may want to call your Association staff, though, for help evaluating the situation. If you DO need an attorney, staff can refer you to a reputable lawyer.

Question: I think my supervisor is targeting me for layoffs. Little by little, he's giving all of my responsibilities to one of my co-workers. What can I do?

Answer: Management does have the right to change your work assignments, but this action alone doesn't indicate that you're about to be laid off.

Most agencies (though not all) have a negotiated layoff policy with seniority as the primary criteria. Others combine seniority AND performance to determine who might be laid off. Generally, the City cannot simply "hand pick" who to layoff.

If you are concerned, though, it's fine for you to ask your supervisor WHY he's taking away your duties. If you'd like assistance with this conversation, you might ask one of the staff at the CEA office to go with you.

Question: I was threatened with discipline for spending too much time on the internet. It wasn't true and I won my appeal. But now the City has taken away my computer! Previously, I communicated with my boss by e-mail, if I needed supplies or needed to ask about time off. How should I handle these things now? No one will give me an answer to this.



Answer: If you need to communicate with your boss, do this in person, by telephone, or with a written note. In fact, these methods are often preferred over e-mail

correspondence which can be clumsy.

If you are the ONLY person in your office without e-mail capacity, you might be able to argue that you are being treated "disparately" or retaliated against for appealing the discipline. California law protects you from being retaliated against for exercising your due process rights. If you want to raise these issues, feel free to ask Association staff for help. It might be better to try to "fly under the radar," though, for a while. Your Management is obviously looking for grounds to take action against you.

Question: I'm a working supervisor and have been told that my job class is "going exempt" and that I won't be receiving overtime pay anymore. Can they just do this? Don't I, or my union, have any say?

Answer: No, the City can't "just do this!" First of all, your job class might NOT fit the definition of exempt under the FLSA. This requires analysis -- and you can object.

Second, *even if your job class WOULD meet the FLSA definition for "exemption,"* the City cannot take away your overtime benefits without bargaining with your union. Loss of overtime is a definite "takeaway." The City can put this issue "on the table" when your MOU expires, but not before (unless your union agrees to it.) If your job class truly should be exempt, the City can eventually accomplish this change through negotiations.

"Two-Tiered" Retirement Systems...Are They Legal?

In a word, Yes. The "two tiers" refer to different levels of benefits for different groups of employees. When benefits get expensive – or political leaders start getting cheap – the most common way for agencies to save money is by providing *lesser* benefits to new employees. **As long as the employer negotiates these changes with the affected unions, they are perfectly legal.**

Thus, it is possible for *current* employees to enjoy the 2.5%, 2.7% or 3.0% at 60 retirement benefit, but for new employees to be returned to the 2% @ 55 -- or even the 2% @ 60 plan, *if your Association agrees to this.*

It is also possible to agree that "new hires" pay their own (7% or 8%) monthly PERS contributions, pay larger portions of their monthly medical premiums, or are restricted only to less expensive medical plans. Some MOU's contain MANY "tiers" reflecting benefits that have dropped, again and again, over the years...

Traditionally, unions have opposed all two-tiered systems because they create "lower classes" of employees. Ultimately, this disparate treatment can create a rift in the workplace, as well as in the union itself. During VERY difficult times, however, groups often agree to lower benefits for future employees, as the least painful method for coping with their employer's financial crisis.

What are NOT negotiable are losses of retirement benefits (including retirement health benefits) for any current employee.