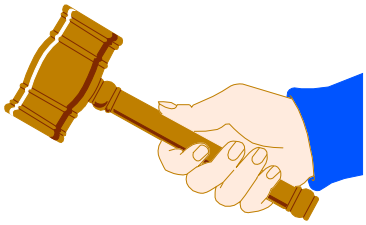
# Regional Employees Association of Professionals May 2015

## Dispute Resolution... How Do You Enforce Your Rights on the Job?



Once your Association negotiates a contract with the County, how do you know that it will be followed? If it's not followed, or if you believe that your rights under that MOU are being violated how do you go about correcting this? What if you believe that your rights under state or federal employment law are being violated? Is there anything you can do, short of going to Court?

YES. You DO have the right to enforce your Labor Contract -- and most labor and employment laws are incorporated in that Contract -- by using the local administrative procedure: the grievance procedure. While many people think that their Association's grievance procedure isn't effective at resolving workplace problems, it can be very effective. "We have our ways" of making your grievance process work.

What follows is a brief summary of the best ways to enforce your rights on the job, not only for yourself, but for your members as a group, without resorting to litigation. Please understand that each case is unique. If you have a *specific* problem, feel free to call your Association staff before taking action.

### What ARE your "Rights," Anyway?

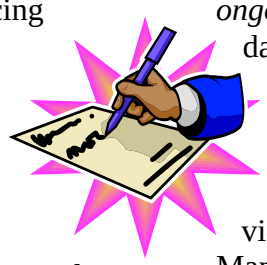
If you have a problem on the job, chances are pretty good you may be experiencing a violation of rights. Your "rights" are created not only in your union contract (or MOU) but by state and federal law. If the MOU says that you've got a certain number of vacation days, for example, but every time you try to schedule a vacation, you're told that the department is short-staffed and can't let you go, you may have a violation of your right to take vacation. If you're told to stay late at work to finish a job, but the next day, your boss says to go home early instead of collecting overtime pay, you may have a violation not only of your contract but of federal law.

If you are regularly assigned to do work that is outside your normal duties, you may have an out-of-class grievance. If your boss is chronically

nitpicking your work, or embarrassing you in front of co-workers, you may have a violation of your right to a "safe and harmonious workplace."

Your legal mechanism for resolving a workplace problem is the grievance procedure, which is your – and your Association's – tool for enforcing your contract.

## Filing a Grievance



"Filing a grievance" isn't an act of aggression; it's the use of your in-house procedure for resolving disputes. The procedure is negotiated between your union and the County as a business-like method for bringing parties together to settle their differences. Although your boss may bemoan the fact that you "didn't talk to him first" before filing, there isn't any reason not to make use of the procedure – and there are some very good reasons not to waste time.

Luckily, the very first step in most grievances is exactly what your boss may want: an informal, verbal discussion about the problem. The difference between a chat, however, and a first step grievance meeting is that the supervisor is obligated to give you an answer within a certain period of time. You are also obligated to bring their attention to the problem within a certain period of time after it occurs, and if you fail to do this, you lose your opportunity to grieve. So, the first step in filing a grievance is a simple oral or written notification to Management that you believe that your right under the MOU (or some other rule, law or policy) has not been followed. You MUST be able to cite the violation. If you are unhappy about a situation, but aren't aware of any rule that it violates, you may have a problem (and may certainly ask Management, or your union rep, for assistance with the problem) but it may not be a grievance. You can find your grievance procedure in your MOU or the County's Personnel Rules. You will notice that the time limits are tight: ranging from as short as a few days to usually no more than 30 days. Again, the downside is that if you don't raise your issue within that time period, you forfeit your right to protest the violation. But the upside is that Management must also respond to you within the time limits. Contrary to popular belief, grievances do NOT take forever to resolve; you can usually "get to the top step" (the County Manager, an arbitrator or the Civil Service Commission) within about 60 days. There is one important exception to the time limit requirement: grievances based on *ongoing violations* do not require a strict filing date. Harassment cases are usually ongoing, for example. So are out-of-classification grievances: you begin taking on *some* of the duties of another class and, over time, take on more and more. What starts out as a small violation becomes a large one. Sometimes, Management tries to avoid these grievances by arguing that if you didn't protest within the first few weeks, you "waived" your right to access the grievance procedure. This defense is not valid: the law widely recognizes the "theory of the ongoing trauma" with an understanding that on any day that an event occurs, a new violation – and a new right to grieve -- is established.

## Enforcing Your MOU

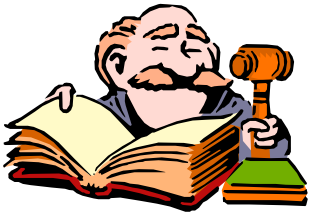

Speaking of "waiver," it's important to understand that as a member of a union, your grievance may enforce the contract not only for your, but for everyone in the same situation. **So, if you *fail* to file a grievance over a violation, you can actually endanger the Association's right to object to similar violations *in the future*.** This is because your tacit acceptance of the status quo can be construed, legally, as a "waiver." Over a period of time, if employees accept certain practices, Management can reasonably argue that *its* interpretation of the contract is the established practice. For this reason, your union has the right to file a grievance over the violation of your rights with or without your agreement! Under this circumstance, the grievance will clearly state that you are not a party to the dispute. Almost all County Managements say that they are in favor of resolving problems at the lowest possible level. The idea is for you and your supervisor to talk about the problem, so it may be nipped in the bud. In a surprising number of circumstances, this works. Sometimes, the supervisor is not even aware of the violation, and your pointing it out is all that is necessary. On other occasions, the supervisor has a legitimate explanation of the

situation, or is able to work with you to make a minor adjustment that is satisfactory to both of you.

## A Formal Grievance

When the informal step doesn't provide a resolution, a written grievance is the next step. This is where you may want to be represented by union staff, although under the law, you always have the right to pursue your own grievance. Local rules vary as to the form of a grievance, and if you don't state your case in the proper form you may be defeated in your effort later.

At the first formal step, there will normally be a grievance meeting, though some employers provide only a written answer. Most Association members use their professional staff to present the grievance, explaining what provision has been violated and what corrective action it will take to resolve the problem. Grievance procedures are designed to permit appeals to a higher authority if you are not satisfied with your Department's response. Most public employers take the procedure seriously, and upper management does *not* simply rubber stamp the decision made by lower supervisors. By making reasonable arguments and requesting reasonable solutions, we can successfully resolve most workplace problems.



## When the Grievance Process Fails…

Then again, there are some occasions where the grievance process isn't taken seriously. And there are others where the parties have a sincere difference of opinion. In still others, the resolution to the grievance would be so expensive that Management makes the conscious decision to "stonewall," simply hoping that your Association will eventually become tired and go away. Your union staff is available to make sure that none of these circumstances result in the failure of your legitimate grievance. Rest assured: there ARE methods for enforcing your rights that don't rely upon the good will of your County Management.

**Contracts are enforceable in court** and, before 2001, this would have been your union's primary venue for filing a "breach of contract" complaint. The problem with court, of course, is that it is extremely expensive **and** extremely time consuming. This left many small organizations with no realistic ability to enforce their contracts at all. Many were forced to join large unions simply to protect their members' basic rights.

## Arbitration

The labor movement's alternative to Court has been to arbitration. Many organizations have negotiated arbitration clauses into their MOU, allowing for dispute resolution by a neutral third party. In this case, the arbitrator steps into the role of a "judge" and conducts a hearing on the matter in dispute. Arbitrations are *formal* hearings, very much like court. Each side calls witnesses, who testify under oath. The parties exchange legal briefs and a court reporter creates a permanent record of every word spoken. The two sides are buried under a myriad of documents, and the arbitrator takes several months to provide an answer. So, although arbitration is more efficient than litigation, it is far from quick and cheap. Instead of years, the process takes months, and instead of tens of thousands of dollars, the cost is usually a few thousand dollars. And there is one other serious flaw with arbitration: it must be negotiated as an *agreed upon* method for resolving contract violations – and very few employers are willing to agree to it, or to be "bound" by it. In most cases, even if an county agrees to an arbitration clause, it will be "advisory," to the County Manager or County board. Luckily, most arbitrators' decisions (even the *advisory* ones) are followed by employers. But it can be extremely frustrating for your Association to spend thousands of dollars on a case, only to have the County ignore the decision. The next step, in this case, is that the union must find a lawyer to take the arbitrator's decision to court for enforcement.

## The Public Employment Relations Board

**Thankfully, in 2001** the State Legislature placed cities, counties and "special districts" under the jurisdiction of the Public Employment Relations Board (PERB was established in 1968, thanks to the lobbying efforts of the League of California

Cities, most public agencies had been left out…) Today, however, **your** contract violation, no matter how minor, can be heard as an "unfair practice charge." The huge advantage of using this State Agency for dispute resolution is that it is free and (somewhat) fast. PERB hearing officers analyze claims and call informal hearings within a few months of filing. Most matters are settled at the informal level, and neither the size of the case, nor the size of the agency, are deterrents. In recent months, PERB has directed a water district to reinstate an employee who was fired "for filing for too many grievances," compelled a small district to restore a supervisor's job because he was denied the right to representation at an interview, and advised another district that it cannot change its job descriptions without giving the union the opportunity to bargain. The vast majority of employees' rights violations *never* make their way to PERB. They are resolved through informal communication at the first step of the grievance procedure. **But your *ability* to go to PERB causes public employers to take grievances more seriously.** Employers know that if they don't take your grievance seriously, you DO have other "avenues for redress." It's probably safe to say that once your Association takes a legitimate grievance to PERB, it will probably not have to do this again.

## San Francisco: Judge Overrules another Voter-Initiated Pension Cut

**A state appeals court has now overturned most of the pension cutbacks for city employees that San Francisco voters approved in November 2011. The cutback involved a reduction of cost-of-living increases for retirees when their pension fund was earning more than previously expected.**

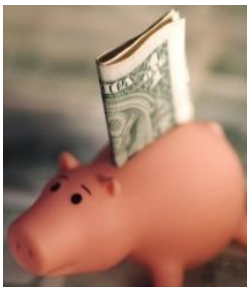
**The decision helps about 23,000 ex-employees who retired after November 1996 and many more current employees/prospective retirees. The ruling doesn't affect another portion of the ballot initiative which requires new city employees to contribute 7.5 percent of their salaries to the pension fund.**

**The retirees' right to cost of living adjustments was upheld by the Court because the voters' decision to eliminate these COLAs violates the concept of vested benefits. In delivering the 3-0 ruling the court said:**

**"Upon accepting public employment, one acquires a vested right to a pension based on the system then in effect, and to additional pension benefits conferred during his or her subsequent employment. These cannot be withdrawn once they have been conferred."**

**The attorney for the retirees and unions said simply: "This keeps our people up with the cost of living."**

# *Study Finds that Defined Benefit Plans (like CalPERS) Are Superior to Defined Contribution Programs*



The National Institute on Retirement Security has just released its study of three states that discontinued traditional, "defined benefit" retirement plans and placed new employees in *individual* ("defined contribution") retirement investment programs. The findings were surprising: the cost of the traditional programs did NOT go down, and the employees who invested in their own individual programs spent more and received poorer benefits than if they had been in a traditional plan. Here are the details…

Until the 1990s all public employees' retirement programs were "defined benefit" plans. This meant that the retiree was guaranteed a certain monthly benefit, by contract, and that the employer's cost to fund the benefit could fluctuate. CalPERS is a defined benefit plan, as are all county retirement plans. These plans are funded by employee/employer contributions, which "pay off" to retirees based on a formula (the 2.0% @ 60 or 62; the 2.5% or 2.7% @ 55; or the 3.0% @ 60) multiplied by age and years of service.

The **employee** contributions in California's plans are fixed: usually 7% or 8% of payroll. But employers' rates can fluctuate a lot, based partly on how much the fund is used, but mostly on how well the fund is doing in the stock market. From the mid-1990's to the mid-2000s, most agencies were "super funded" with PERS, which meant that they were making so much money in the stock market that the county wasn't required to make any contributions at all. 75% of benefits that retirees were living on in 2008 were derived from the stock market, rather than employee/employer contributions.

## *The Crash…*

2009, of course, changed everything. The stock market crashed, and its flood of money into retirement funds became a trickle. PERS quickly began reassessing rates, and agencies were assessed with contributions for the first time in a decade. The timing was terrible: these "skyrocketing" rates (which were really no higher than pre-1995) hit public agencies at the same time that their tax bases were crumbling. Hence the media hysteria about the "ballooning" costs of defined benefit plans and the "time bomb" of government liabilities.

Although anti-government forces had been railing against "defined benefit" plans for years, the Recession brought the issue to public attention. After all, why should public employees be *guaranteed* a particular retirement benefit while most employees have NO retirement benefits (or lost their life savings in the stock market) and while their employers (and the public) must struggle with higher taxes to pay for these?

## *The Alternative to Guaranteed Benefits: Individuals Gamble on the Stock Market*

So, what is the alternative to these "Cadillac" defined benefit plans? "Defined contribution" plans, where employees have the "opportunity" to manage their own retirement program -- with no guaranteed outcome, at all. These are programs where the employer (and employee) agree to pay a certain, fixed contribution, and the employee gets to invest it in the stock market.

Luckily in California, our legislature has <u>not</u> been persuaded to abandon CalPERS and force you to gamble on the stock market. PERS is the largest defined benefit system in the world, and has now recouped all losses from the Recession. But other, more conservative states have succumbed. The National Institute focused on three of these: West Virginia, Alaska, and Michigan.

In all three of these states, the rising cost of retirement benefits was blamed on the defined benefits system, and the states literally closed their systems to new employees. The employees already vested in the traditional plans remained in them as required by law and drew benefits when they retired. This meant that the states' financial resources were

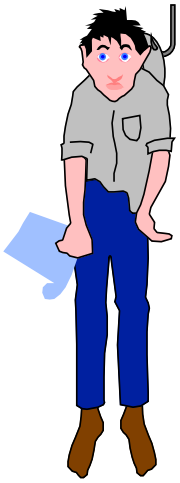
drained and the debts mounted *because there were no new participants to contribute to the plans.*

**In Alaska,** the state blocked entrance to the traditional retirement plan to new hires starting in 2006. New employees were enrolled in a defined contribution plan with matching employer/employee contributions, but no guaranteed retirement benefit. The debt of the left-behind defined benefit plan more than doubled, from $5.7 billion in 2006 to $12.4 billion in 2014, and employees in the new Defined Contribution plans lost much of their savings in the Recession. Legislation has now been approved to move all public employees back to the defined benefits plan.

**In Michigan,** the traditional plan was actually *overfunded* in 1997, but state leaders decided that switching employees to a defined contribution program would save money. The result was that the abandoned defined benefit program amassed a debt of $6.2 billion by 2012. Most employees hired after 1997 either have no retirement at all or meager defined benefit plans.

**West Virginia** closed its teachers' retirement system to new hires in 1991. As the already vested employees continued to draw on the system, it bordered on collapse, while the post 1991 employees found that their "self-directed" plans rendered "inconsistent" earnings. The state returned to a defined benefit program for teachers in 2005, and it was fully funded until 2008

## Employers Can't Use Layoffs to Get Rid of "Problem Employees"



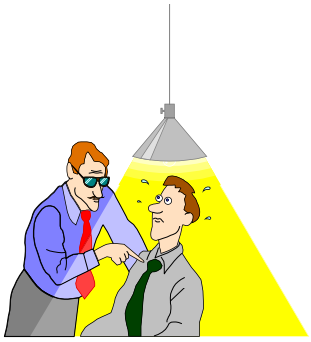
Public employees in California can't be terminated without a hearing. In 1978, the State Supreme Court decided that they have the constitutionally protected right to due process before their employer can strip them of the vested "property interest" of their jobs. In fact, they have the right to TWO levels of hearing prior to termination: the first before a top manager of the Department or the County, and the second, a "full evidentiary hearing" before a "reasonably impartial" third party.

In other words, while it's **not** true that "you can't fire a public employee," firing an employee can be a time-consuming and expensive process for your employer. **Layoffs, on the other hand, are fast and cheap. The "right to layoff" is an absolute management right, and very few agencies grant their employees any right to appeal, or object to, layoffs.** So, what stops a public agency from getting rid of an employee they would like to fire simply by laying him off? *Well, actually, the law does.* **In 2009, the California Circuit Court told the City of Alameda that it cannot use the layoff procedure to circumvent employees' right to full due process prior to termination.**

The case, *Levine v. City of Alameda,* involved an employee who believed that his layoff was a pretext, and that he was actually being fired because his supervisor disliked him, but didn't want to go through the discipline procedure. The Court agreed, and found that the employee was entitled to a "full evidentiary hearing," to raise the issues about the "real" reason for the layoff.

This case, and others like it, are important because they ensure that public agencies lay employees off only for OBJECTIVE REASONS, such as lack of work or lack of funds. If employees believe that they are being laid off for other reasons – discrimination, retaliation, or personal relations – they may challenge the layoff through the grievance procedure, or PERB or in the Court system.

# What is "Invasion of Privacy?"



The urge to poke into other people's business seems inherent in the human animal. Until the 20th century, however, there was no legal concept of "Invasion of Privacy." In the world of employment, where some people seem to be the subject of perpetual scrutiny, the "right to privacy" mostly refers to your right to be left alone.

In most settings, when your legal right to privacy is violated, you may sue "the invader." However, the "right to privacy" in your *private life,* does not, for the most part, carry over to the workplace. This is especially true for *public* employees. In general, when you are at the employer's workplace, or "on the employer's dime," your legal protections against being bothered, watched, listened to, or even searched, go out the window. But, we say "in general," because the law isn't completely consistent on this subject. Here are some examples:

**The County CAN monitor your email, but it CANNOT listen to your phone calls** UNLESS you have been advised that you are on a recorded line, or in a job that is subject to having calls reviewed. There are many circumstances under which members of the public have requested, and received, employees' email records and phone tapes. You should assume that when you use county equipment (computers, phones, faxes, copiers, etc.) that whatever is generated is public.

**Your desk is "private" unless your supervisor has legitimate business reasons to retrieve materials from it.** Also, if the public county is conducting an investigation, it may also check your desk, computer, and files. (Assume that the County would always be able to find a "legitimate business reason" for a search.)

**Your "personal effects" (purse or briefcase) are considered private** and cannot be searched, unless your employer has a warrant, or has negotiated a policy with your Association allowing them to conduct such a search.

**Your Personnel File IS private –** at least in the sense that it is not available to the public. The California Public Records Act excludes personnel files from public access. Usually a court order is required before personnel files can be released to anyone other than the employee. *However, recent court decisions have found that if you are convicted of certain kinds of crimes while working for a public county, the county has a legal obligation to notify prospective employers.*

**Your medical records are private - unless you have a workers comp claim.** If you are claiming that you have been injured or became ill as result of your job, the County's workers' comp carrier has the right to examine your medical records to determine whether or not your job was actually the cause. The records can be reviewed only after you sign a "consent" form, and the *insurance company cannot disclose your medical records to your employer***.**

**Even if you are seeking accommodation under the American's with Disabilities Act,** unless this involves your claim that the disability is work-related, the County is NOT entitled to your medical records. (It merely has the right to information pertaining to the work restrictions requiring "accommodation.")

**Unless you are a "sworn" officer, the County does NOT have the right to know what you do in your personal life.** The only exception here has to do with other employment you may hold. The County has a right to know that you are not doing work that could create any conflict of interest, or which could cause you to injure yourself, and then file a claim against the County.

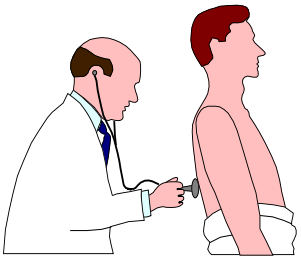
Even if you are accused of doing something dangerous, immoral or *illegal* in your private life, the County has no right to information about this matter, nor can the County 'use it against you' as a basis for discipline.

## Then, again, there are the exceptions:

**If you ARE a police officer or fire fighter,** you may be held to different standard, as you are considered a "representative" of the county at all times.

**If you are a heavy vehicle driver and carry a class A or B license,** and are either accused or found guilty of a "DUI" (driving under the influence) or lose your license for another reason this will be reported by the DMV to your employer.

**If you are in uniform,** even on your own time, while you are committing the "improper" act, you can be considered to be viewed as a representative of the county by the public, and therefore subject to possible discipline for non-work activities.



**If you are "on-call"** (which means in paid status, after work hours) this is the same as being on the job – and your private life isn't private.

## Associate Rich Anderson Joins the Staff at CEA

Union Representative, Rich Anderson, has joined the staff at CEA. Rich received his B.A. and M.A. in English from CSU Northridge, where he served two consecutive terms as union president, representing over 8,000 Teaching Associates, Graduate Assistants, Graders, and Tutors at the 23 University campuses. He negotiated statewide contracts, handled individual and group grievances, managed organizing staff, and lobbied legislators on the local, state, and national level. Most recently, Rich worked for another international union as a Field Representative, handling discipline cases, grievances and arbitrations and implementing steward training programs. He also conducted membership organizing and political campaigns. Rich's special assignment at the CEA office will be to improve communication and education of our Association Boards and members.

## Medical Marijuana License: Not a Defense against Discipline!

**Medical marijuana has now been legal long enough in California for it to make its way into a myriad of Court decisions. For example, if an employee is in a vehicle accident on the job, is he less guilty of intoxication if he has a prescription for his marijuana? Does the prescription protect him from discipline? If a job applicant is found to have marijuana in his system, is this not a violation of the "zero tolerance" policy because it's "legal"? The answer to all questions seems to be "NO." The Compassionate Use Act of 1996 says that seriously ill Californians may obtain and use marijuana for medical purposes "where that use is deemed appropriate and has been recommended by a physician." Such use has been found appropriate for the treatment of cancer, anorexia, AIDS, chronic pain, glaucoma, arthritis, and migraines, among other ailments.**

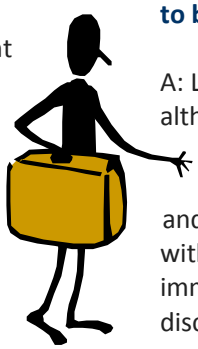
**So, when a newly-hired employee at Raging Wire Telecommunications was fired because a substance test revealed marijuana in his system, he explained that he had a prescription for treatment of his chronic pain. The company was NOT compassionate and terminated him. The employee alleged that the company violated the California Fair Employment and Housing Act (FEHA) by discharging him because of that, and by failing to make reasonable accommodation for his physical disability. The California Supreme Court did not agree, however. It ruled that the employee could not sue under FEHA -- at least not based on the issue of his right to use marijuana in the workplace. The decision established that employers may treat marijuana as an illegal drug in making employment decisions, even if the employee has a "compassionate use" permit. In other words, FEHA cannot be invoked to require employers to accommodate the use of medical marijuana.**

**What about the employee whose medical marijuana use is "discovered" when he has a vehicle accident? Is "driving under the influence" more excusable if the employee has a prescription? Again, the answer seems to be no. Decisions in this arena conclude that employees do not have ANY defense to "DUI" whether they have a prescription or not! After all, alcohol is legal, but driving under its influence is definite grounds for discipline. Employees taking ANY "medicine" which could affect their driving are required to notify their managements BEFORE they get behind the wheel.**

# 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 specific problem, feel free to talk to your Board Rep or Association Staff at (562) 433-6983 or cea@cityemployees.net.**

**Q: Our Human Resources Director told us that in 2018 they can begin charging us 12% for our retirement contribution, is this true?**



A: NO! They may be referring to the 2013 retirement law, PEPRA (Public Employee Pension Reform Act) which does allow permit public agencies to declare impasse in negotiations, starting in 2018, if employees refuse to contribute 50% of their contributions, up to a maximum of 8% for miscellaneous employees. The only people who can be forced to pay 12% are police officers, firefighters, and county peace officers.

**Q: My manager put out a directive saying that no one in our division may work more than 4 hours of overtime per week from now on. I've been putting in more than 10 hours a week for months, trying to catch up on our backlog of work. I'm worried now that I'll be in trouble as the orders start to pile up again. Any suggestions? Also, it appears that other departments are not coming down with these same directives. Can management do this only to us?**

**A**: It sounds like you're definitely overworked, and the department is probably understaffed. Unless there's an MOU provision controlling this, management *does* have the right to create different rules for the assignment of overtime in different departments.

Your dilemma is trying to figure out how to manage your workload within the rules in your department, without negative consequences. The only solution to this, since the task sounds nearly impossible, is to communicate with your supervisor about it. You need to explain, probably in person, but with some written back-up, what work won't be finished if you can't work the extra hours of overtime. After this, it should become the County's decision either to leave the work unfinished or to authorize the hours. If you are concerned that your manager won't be reasonable, or will try to blame you for the problem, call your union rep for help. A staff person CAN represent you at this meeting.

**Q: There has been some discussion about my position being outsourced by the County. I have been in my current job for two years, but held another, lower position for 12 years. In the case of a layoff, would I lose my job or would I be able to bump?**

A: Layoff procedures vary from county to county, although there is a state law which says that layoffs must be done "in seniority order" when they are conducted for economic reasons. Generally, you and your Association have the right to meet and confer with management over "impact" when layoffs are imminent, and bumping rights are usually the core of this discussion. You might be able to find your layoff procedure in the MOU or Personnel Rules, but be forewarned that it is probably vague – and subject to conflicting interpretations.

The more important question, though, is: *are you sure that the County has the RIGHT to "outsource" your job?* If you haven't already, you should notify your Association Board about this threat. Replacing your job with a contractor may very well violate your Contract or State law.

**Q: Our boss just told everyone that "from now on, you must be prepared to answer the phone and respond to work seven days a week, any time of day." Can they do this? He says it's because public employees are first responders.**

A: **Absolutely not!** While *certain* public employees are first responders who must always respond to emergencies (i.e. firefighters) the great majority of non-sworn employees are not. If your job description doesn't include being "on call' or "on standby," your boss can't force you to pick up the phone during non-work hours. People who are required to be "standing by" for emergencies receive Standby Pay. However, if you *do* pick up the phone, you cannot refuse an order to come to work, as long as you are able to do so safely (i.e. you are not intoxicated.)

**Q: My wife and I are adopting a baby and, as the date approaches, we are taking the birthmother to doctor's**

**appointments. I want to know if I am able to use sick time for these appointments.**

A: Possibly. The law doesn't specifically address this subject, and it's clear that the birth mother isn't a family member. The Family Medical Leave Act DOES say that you may use up to 12 weeks of time to care for a sick family member or for baby-bonding (including bonding with adopted babies) and state law says that you may use 50% of your yearly sick leave accruals to care for family members, including adopted children. So to the extent that you can demonstrate to your employer that the "in utero" baby is YOUR adopted baby, you should be able to use your sick leave to go to these appointments.

**Q: All of the members of our Mid-Managers Association are "exempt" and we have just been told that we must account for all time during normal work hours, 8am to 5pm, Monday through Friday. If we leave for a doctor's appointment, or some other activity, we must use sick leave or admin leave. However, if we are required to work past these "normal" work hours or on weekends, we are not allowed to record that time on our timesheets, and not allowed to flex time on other days. Interestingly, the County's attorney just put out a memo reminding employees that time sheets are a legal document and must be truthful, signed under penalty of perjury.**

**Since timesheets must be accurate under penalty of perjury, shouldn't we enter all the hours we work? I don't expect overtime pay, but I do think I should be honest, and I would like my management to know when I work excess hours. Alternately, do all of these requirements mean that I should really be an hourly employee (eligible to receive overtime?) It seems as If I'm treated as an hourly employee when it comes to taking time off and not being able to "flex" my schedule, but I'm salaried when I work extra hours and they don't want to pay overtime. Is this legal?**

A: You have two issues here: whether your requirement to "track hours" should make you an hourly employee, and whether you should be honest in reporting those hours on your time card. On the first issue, sadly, the requirements you've described don't make you an hourly employee. It just makes you an exploited employee. As the federal Fair Labor Standards Act has been eroded over the years, more and more "worker bees" have been shunted off into the ranks of exempt employees, which means that they are unable to collect overtime, but are still treated very much like hourly employees. So, while the law does not **require** exempt employees to track their hours worked, it does allow the employer to require this. The law also says that, if the employer provides sick leave or other kinds of paid leave, the employer may insist that exempt employees use these accruals when taking time off during the regular work day. Exempt employees do differ from non-exempt employees, though, in that *if you have no accrued leave* and take time off which is less than a full day, your employer may *not dock* your pay.

On the second question, if the County is requiring you to certify the accuracy of your timesheets "under penalty of perjury," you should, by all means, be accurate! If a manager threatens to discipline you for this, you should call your union staff to intervene.

**Q: Our Police Officers are beginning to use body cameras. Because we often work alongside the officers in the field, we will eventually be recorded by them. What rights do we have pertaining to the video captured by these cameras? For example, I know that citizens who are caught on camera and are not involved in the specific incident have the right to be blurred out. Do we have the same right or do we waive our privacy while at work? Also, because we are non-sworn do we have the same ability to record citizens on a call without their knowledge or do we have to gain their consent prior to recording?**

A: While body cameras are quickly becoming popular in Police Departments, the rules regarding their use are still being figured out. First of all, as with any equipment, the employer has the right to install it, but any policy regarding its use in personnel matters is subject to bargaining. So, if/when the County wants to use these cameras for any personnel-related reasons (such as discipline) it must first negotiate with your union.

Since you are an employee and not a member of the public, your employer *does* have the right to video you, as long as you know about this in advance. You don't really have a privacy right in this arena; in fact, if your image is picked up by body cameras it can be helpful to your employer to know who, other than the police officers, was present at an incident. You do <u>not</u> have the right to be blurred out if the camera records you while you are on the clock, unless you are recorded in circumstances where you *did* have a reasonable expectation of privacy (for example, in the locker room).