Regional Employees Association of Professionals March 2014 News

County Employees Prepare to Decertify SEIU… and Form Independent Labor Association

For several months now REAP has been holding meetings with employees in Riverside County bargaining units, working toward the goal of decertifying SEIU and forming our own, local labor organization. Forming an independent, local labor organization is not new; we are not the first to do this.

REAP's foundation is solid; our values, mission and vision are set. We **are** moving forward. Won't you join us?

Over the last few months, REAP Interim Officers and members have been diligently working to build our own local labor organization. We have researched, read and analyzed those documents that govern how we become our own labor organization. We are currently working with current and future members by:

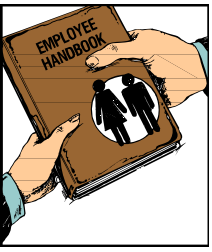
- Assisting those in the Supervisory Unit to drop out of SEIU during April 1 -30, 2014;
- Assisting members in the Para-Professional, Professional, Parks & Recreation, Waste Management and Nurses bargaining units to rescind SEIU'S Agency Shop agreement with the County; and
- Establishing REAP as a "non-exclusive representative organization."

Our long-term goal is to be entirely free of SEIU and to have our own strong, independent democratic union that can negotiate with the County on our members' behalf, and vigorously represent people who have problems on the job. We will collect our own dues, make our own policies and hire our own staff – all under the direction of our own elected leadership. We will take direction from OUR MEMBERS. No outside entity such as SEIU 721 in LA or SEIU International will tell us what we need or don't need. We will call all the shots!

To achieve this goal, we are establishing REAP as a "non-exclusive representative organization" with the County. This means that we can NOW represent employees with work-related problems,

but cannot yet negotiate an MOU. When the "decert" is over, we will be the "*exclusive* representative," and will also be able to negotiate and enforce our MOU.

In the meantime, County supervisory employees can *individually* discontinue their SEIU memberships. If you are in the Supervisors' Unit, you have a "window" in April 2014, when those in the Supervisory Unit may withdraw from SEIU. In order to do this, simply go to the REAP website www.reap4us.org and click on the "Supervisory Unit" link. There, you will find sample letters. You only need to input your own information, print and sign the letter. You will need to either hand deliver the letter to SEIU 721 or send the letter certified mail. If you hand-deliver the letter, ask for a receipt! SEIU must receive the letter between April 1 – 30, 2014. Don't miss this opportunity, it is only available to the Supervisory Unit and only available in the month of April, of ever year of the MOU.



If you are in one of the other bargaining units, we are working on a campaign to rescind the Agency Shop agreement. This is the provision, which requires that everyone in the unit either pay union dues or a service fee. The first step toward "rescission" is a petition, signed by 30% of the members of the unit. That campaign is gearing up now. To be MOST EFFECTIVE, register at www.reap4us.org. At the point we have reached just over the 30% mark in any one bargaining unit, we will begin circulating the "rescission petition" so register on the REAP website and tell your co-workers to do the same!

In order to accomplish all of our goals, we have signed a short-term retainer with City Employees Associates. They are a labor relations consulting firm, which represents public employees' unions with grievances, disciplinary appeals, contract negotiations, arbitrations, etc. CEA also helps groups change unions, if necessary. ***They have helped organizations decertify SEIU 27 times, most recently in Coachella Valley, where they helped set up the Coachella Valley Water District Employees Association.***

CEA is a 9-person office (Director, Robin Nahin, attorneys Brian Niehaus and Jeff Natke, and union reps, Mary LaPlante, Mike Gaskins, Andy Lotrich, Wayne Palica, and Oshea Vasquez) currently representing 115 employees associations, statewide. They ONLY represent employees at cities, counties and special districts in California.

CEA will be handling the legal aspects of our decertification effort, and they will be representing REAP members for a fee of $15 per member, per month (REAP dues is $20.00 per month). CEA will be providing the following services to REAP members:

- **Phone and on-site consultation for Association members on labor and employment matters;**
- **Representation of members with grievances and disciplinary appeals, up to and including arbitration and/or appeals to the Public Employment Relations Board**
- **Assistance with Agency Shop negotiations and/or election, upon request.**
- **Contract (MOU) negotiations and enforcement;**
- **Legal advice to the Board of Directors;**
- **Training and staff support to the Board of Directors**

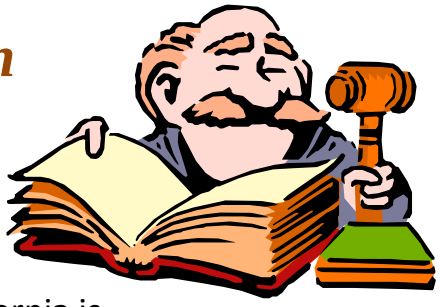
- **Advocacy, fact-finding, and assistance with benefits, retirement, and compensation matters, including salary surveys;**
- **A monthly newsletter, emailed to Board and membership**
- **Assistance with media, community advocacy, and political action as needed;**

CEA ALSO PROVIDES SOME NON-LABOR LEGAL SERVICES, which are available NOW to REAP members. Please see the attached flyers.

ABOUT THIS NEWSLETTER…

This newsletter will be published monthly and distributed to Association members, *only.* We will try to cover issues, which are significant for our members, as well as developments in employment law, which may affect you. If there's a particular topic which you'd like to see discussed please call or write our staff person, Robin Nahin. This newsletter is intended to be YOUR VEHICLE for communicating with your staff, Board and co-workers.

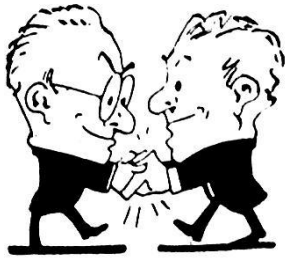
What is the Difference Between a Union and an Employees Association?



Public employees are often surprised to hear that legally, there is no difference between an employees association and a union. They are both unions. A public employees association – or union -- in California is mandated under the Government Code to perform two functions: (1) to "collectively bargain" a Contract (also called a Memorandum of Understanding); and (2) to enforce members' rights under that Contract.

Your Association also has all the legal rights and obligations of any union. This means conducting business on behalf of individuals in the bargaining unit (usually by processing grievances or disciplinary appeals) as well as collecting dues, holding Association meetings, using County facilities for daily business, being represented by legal staff, meeting with County Management or the Board of Supervisors, etc. Although many employees associations started out as social groups or "benefits committees," almost all made the transition to Labor Union some time in the last two decades.

The reason for the transition is fairly obvious. Beginning in the early 1990s, the impact of Proposition 13 hit local agencies with a vengeance: layoffs, reduced benefits, and years without raises. Employees snapped to attention and realized that without an MOU – and without strong bargaining – their standard of living was in jeopardy. So, those associations that were social groups or "benefits committees," all made the transition to Labor Union status.



Also, during the same time period, a LOT of very good labor and employment laws were passed. The FLSA (federal wage and hours law, which came into effect for public employees in 1985;) Family Medical Leave laws; COBRA (continued right to use medical benefits;) ERISA (retirement law,) USERRA (rights of employees who serve in the military,) ADA (Disability law;) *Skelly* (disciplinary appeals rights for public employees,) Weingarten (right to representation,) discrimination and harassment laws; access to PERB, PERS Law, etc. **All of these laws, and the Court decisions strengthening them, are enforceable by your association: your local union.** In fact, it is *obligated* to enforce them.

A Local Union Versus an International

What is the difference between your local union and an international union, such as the Teamsters? Legally speaking, there is little difference. The County must treat your Association, and it's Contract with the same respect and authority that it would treat any union. Those employers who have not respected the law have learned, through legal action, that they have no choice.

However, from your members' points of view, <u>the problem with big unions is that they provide NO CONTROL</u> over your own policies, expenditures, contract bargaining, or relations with Management. There are vast differences between local, independent unions, and international ones:

1. International unions are governed by an international constitution and run from an international headquarters.

They are huge, wealthy organizations that, on the state or federal level, may be able to wield considerable power. Over the years, the big unions have been a key force in pushing Congress to establish unemployment insurance, the Social Security system, OSHA (safety laws), the minimum wage, child labor laws, and the workers' compensation system – just to name a few. In California, they have lobbied to bring us vacation protection, the State Disability system, due process laws, and Agency Shop. As the bumper sticker says, unions really have brought us "the weekend."

However many employee groups have chosen *not* to be represented by International Unions. This is because they prefer NOT to belong to a large organization over which they have little control and to which they are not very important. They prefer to belong to small, local unions where they elect their own officers, decide their own bargaining proposals, control their own money, and conduct their own legal work. **It's a matter of democracy and local *control.***

2. International unions decide *how* representation will be conducted and *who* will be sent to do it. The dues rate is decided at an international convention.

If you are not satisfied with the representation, you may appeal, under the International Constitution. The big unions are generally not able to "tailor" their programs to the needs of individual cities. They use a pre-established grid for contract negotiations and rely a great deal on the "steward system."

Reliance on Unpaid "Stewards"

A steward is an elected (or even selected) leader at the workplace who is supposed to assist you with workplace problems. Before there were viable labor laws, the "steward" was crucial in helping you protect your rights or defend yourself against unfair discipline. Today, however, the workplace has become so litigious, that most employees would prefer to be represented by a professional. (Further, a steward who fails to handle a case

properly can be held liable.) The international unions do not do an effective job of training representatives in the intricacies of each state or local jurisdiction – and they are reluctant to spend the money on trained professional staff.

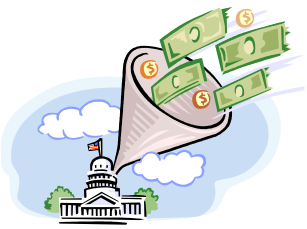
3. Under California labor law (the Meyers-Milias-Brown Act) most control over YOUR job is vested with YOUR Board of Supervisors.

In most cases, the "power" of the big union does not translate into influence over your Board. Their influence is a matter of lobbying on behalf of very large groups of employees: state or county bargaining units or large industrial sites. There is no doubt that big unions have helped the American working class as a whole, but they rarely change the balance of power in smaller political arenas.

Small unions don't necessarily have control over the Board either, but you have more hope of accomplishing this. This is because you and your members often work in direct contact with the Board, are in touch with the residents, and often live in the community. You have every right to become involved in local politics, even to support candidates for office.

4. The International Unions are more expensive than local unions, and do not necessarily spend their resources on YOU.

The Internationals have an *international structure* that must be supported. Thus, their dues are usually more than twice a local union's dues. Like taxes, this might be OK with most members, *if* they got to decide how the money was spent. But they don't.



Most unions spend the bulk of their money on lobbying (not always for the issues you support) and on organizing. "Organizing" is another word for recruitment. Big unions are always losing members and always trying to bring in new ones. They spend a small portion of dues money on direct member services, and avoid the cost of hiring professional reps by relying on the unpaid stewards.

In an independent union, the members establish their own dues rate, and your money stays in your own bank account and it is used largely to pay for direct legal services. After that, if a lot of it piles up, then the members can decide how to spend it: A nice holiday party? A year-end rebate? A members' only scholarship program? A Political Action Committee? (Some local Associations DO use money to lobby and this is perfectly legal.)

What Does Democracy Mean, Anyway?

5. There is a great deal of difference between "democracy" on the international level and true member control over the union's resources and policies. For example, in a local union, the members elect their own officers and decide who will be on their own bargaining team. An MOU cannot be ratified without a vote of the membership. The elected leaders retain and oversee the Association's professional staff. If the members are not happy with their leaders or their staff, they can change them.

If an International represents you, it is the union, not the local members, that has the relationship with your County Management. Your negotiator is paid by the International, and is not accountable to your elected leadership. The Contract may or may not reflect the issues that are important to you, and you may or may not have the opportunity to vote on it.

Small Groups Aren't Perfect, but They ARE MUCH Easier to Fix…

Small, local organizations are far from perfect. They are subject to pitfalls, such as in-fighting among people who represent different factions. But, like any large "family," most groups manage to overcome these flaws in order to accomplish their mutual, long-term goals. The theory behind unions is that the advantages of being a "collective bargaining agent," outweigh the difficulties you would face negotiating on your own.

6. Large organizations can work well for large settings, but ignore the needs of employees in small and middle-sized agencies. Smaller unions enable members to understand and control their own policies and resources. This allows for genuine direct democracy and individual participation.

Ultimately, a high level of **local control** enables employees in cities, counties and utility districts to meet in person with their own Managements, retain their own staff, tailor their own negotiations to their own unique needs, and maximize the use of their dues money. Especially in bad times, this kind of "hands on" management is essential. In fact, when push comes to shove, even the biggest, baddest union will grudgingly admit this is true.

STATE RULES THAT EMPLOYEES MUST BE PAID FOR TRAINING

The California Division of Labor Standards Enforcement has ruled that when an employee is required to receive training, the employer MUST bear the cost of that training. Whether the training is for obtaining a mandatory license or an upgrading of a license to comply with State requirements (technological change) the Employer is held liable for the costs of training the employee.

Also, if the employer is requiring training as part of the minimum requirements to continue to hold a position, these training costs are to be borne by the employer.

"SKELLY LAW" YOUR RIGHT TO APPEAL ON-THE-JOB DISCIPLINE

Most public employees know that they can't be fired without due process. In America we assume that we have a constitutional right to face our accusers, and to be considered "innocent until proven guilty." However, the right to appeal major discipline public employment in California is barely three decades old. (Private companies can *still* fire employees without cause.) Further, while public employees DO have the right to a pre-disciplinary hearing, the actual procedure - and your rights after that - depend to a great extent on LOCAL rules. The following is a brief, *general* summary of your "Skelly Rights." If you have a *specific* problem, please contact your Board representative Association staff at (562) 433-6983 or cea@cityemployees.net

"PROPERTY RIGHT" To Your Job

The California Supreme Court has ruled that unwarranted suspension or termination may be a violation of your Due Process rights under the 4th Amendment, which states, "No person shall be deprived of life, liberty or property without due process." If your income is your property, then the Constitution protects you against having it taken away without a fair hearing.

According to Skelly V. State Personnel Board (a 1975 Supreme Court decision involving the termination of Dr. Skelly) a public employee has the right to due process if he/she has "a reasonable expectation of continued employment." In California, you have this expectation once you pass probation.

"Due process" means that you have the right to a hearing, which must be held *before* the imposition of major discipline. Major discipline includes suspension

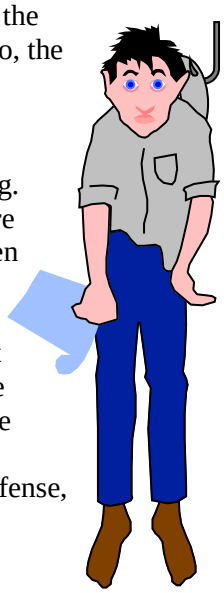
(usually of five days or more), demotion or termination. This "pre-disciplinary safeguard," has come to be known as your "Skelly Right" and must include:

1) Notification, in writing of the discipline the County is proposing to take. The notice must include a) the reasons for the disciplinary action; b) a copy of any charges against you; c) a copy of any materials supporting the charges and the identities of others making allegations;

2) The right to respond, in person or in writing, to a Management authority that has the power to modify the discipline. You must be given five days between the time you receive the "Skelly notice" and the time that you must *schedule* the hearing. If you miss this window, Management can impose the discipline, and you've waived your right to appeal.

INNOCENT UNTIL PROVEN GUILTY

Under Skelly, an employee who is disciplined without due process is entitled to full back pay until the "pre-removal safeguards" -- the hearing -- have been met. Further, Management cannot bring any issues or evidence into the hearing unless you've had the opportunity to review these *in advance.* Also, the burden of proof is on Management; you are innocent until proven guilty.



The "Skelly" is not a full evidentiary hearing. Unless the County decides to offer this, there are no witnesses or cross-examinations. Even worse, the person hearing your case is not an outside judge, but a Management person, who works for the same agency that is proposing to discipline you. However, the law does say that the person hearing the case must show full willingness to consider the information the employee presents in his defense, and must have the ability to modify the discipline.

Despite an assumed "willingness to listen," the Skelly is often not an impartial hearing. All too often, the County has already made up its mind about the employee's guilt. So, the law also requires that the County provide a post-Skelly appeal procedure, which *is* a full evidentiary hearing. This means that you have the right to an attorney, witnesses, evidence, cross-examination, etc.

The specific format of the hearing is negotiable, and should be printed in your MOU. The preferred hearing mode, from the union's perspective, is arbitration: use of a trained, third party professional.

DON'T GO ALONE

You have the right to representation at all levels of the Skelly process. Major discipline can ruin the future of your employment. So, if you believe the County's position is unfair or excessive, you should call for assistance. The Association is your legal advocate, and this is one of reasons that you pay dues.

The Association is legally required to represent you at the "Skelly" level, but is not required to take your case to a full evidentiary hearing, particularly if it believes the case "lacks merit." An attorney or professional representative usually renders the opinion on this subject to your Board of Directors, who in turn decides whether or not to provide your representation.

All non-executive employees have the right to initial representation -- even those who appear to be "bad" employees. After all, some people are falsely accused; others are punished too harshly for "the crime." Discipline should be the same across departments. Everyone must be considered innocent until proven guilty. An experienced legal representative will know what is reasonable and will advise the Association about how to proceed.

If you are threatened with discipline, your representative will meet with you in advance, read your "letter of intent to discipline", and structure a plan for the hearing. You should let him or her do the talking: whatever takes place in the Skelly hearing may be crucial to a later appeal. You should also make sure you are fully honest and thorough in providing information to your representative. The worst thing that can happen at a hearing is to have damaging information crop up at the last minute.

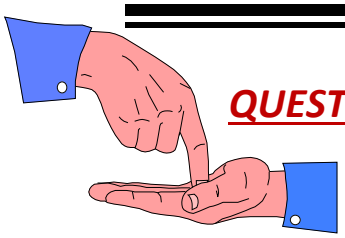
Again, even if you lose your "Skelly," you may have the right to sue for your job in Court. Despite our many obstacles, there is still considerable justice for public employees threatened with discipline in California.

The Law Protects You Against Discipline For "Off Duty" Conduct

The California Labor Code has been amended to resolve one of the largest questions in public sector labor relations: "what right does my employer have to punish me for what I do in my personal life?" Although most Court decisions would tell you, that your employer has NO right to take disciplinary action against you for "off duty" behavior, a great many employers continued to believe that you could be held liable for "behavior unbecoming a representative of the County or "bringing discredit to the employer."

The new law, however, makes it clear that if you suffer "a loss of wages as the result of demotion, suspension or discharge for lawful conduct during non-working hours," you may file a claim with the California Labor Commissioner. The Labor Commissioner has "full remedial authority" over its cases. It may award back pay as well as reinstatement. The Commissioner is not bound by any local hearing process, even if it includes arbitration. What this means is that, even if you go through your County's grievance or discipline process, and lose, you may appeal violations of this law to the Labor Commission.

Labor Code Section 96(k) means that an employer cannot discipline any employee – including Police Officers -- for any off-duty lawful conduct, regardless of the effect it may have on the employer or on the employee. However, the employer is not prevented from taking disciplinary action if an employee is found guilty of *unlawful* conduct away from the job.

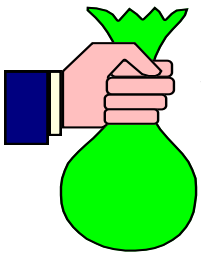


QUESTIONS & ANSWERS…

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 specific work-related problem, feel free to talk to your Board Rep or Association at (562) 433-6983 or cea@cityemployees.net. You MUST be an Association member; all conversations are confidential.

QUESTION: The County just informed me that they have been overpaying me for the last two years, and are going to take back $900 out of my next few paychecks! I didn't know I was being overpaid! Can they do this? Can't I make other arrangements for paying the money back?



ANSWER: No, NOT EVEN YOUR EMPLOYER, can take money from your paycheck without going through proper channels. In 1989, the State Supreme Court sustained a group of employees' argument that wages cannot be garnish without proven just cause.

If your employer is taking money from your paycheck illegally, you have the right to file a grievance to stop it. You can require proof of overpayment and, even if you truly do owe your employer

money, you have the right to negotiate a pay back in a form that is acceptable to BOTH parties.

QUESTION: For several years, I have been doing the work of a higher classification. Now that I am leaving the job, it has been upgraded! Can I get any back pay for all that work I was never compensated for?

ANSWER: The key question is: did you ever get your grievance or request for a reclassification on file? If you did, you could ask for back pay from the day you filed. If you never formally asked your job class to be adjusted, (or, if you asked verbally, but then dropped the ball) we have no ability to prove that you were doing the other work all along. A basic rule in employee-employer relations is that your right to a remedy to any grievance begins on the date you first file the complaint. You cannot ask for a resolution to a situation that was never acknowledged.

If you think you are doing the job duties of another class, the situation IS grievable. The "remedy" you should request is the pay for the position you are filling. If you do not want to involve the union, the very least you should do is file a (dated) letter with your supervisor and the department head, asking for the remedy. You should continue moving up the "chain of command" within appropriate time limits, until you have completed the grievance process, or been reclassified (or relieved of the out of class duties.)

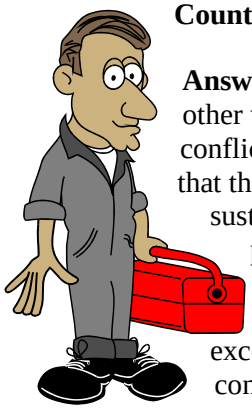
Your Board reps and professional staff are available to help; but if you don't get your complaint on record, you have no legal hold on any benefit that may be forthcoming later.

Question: My boss says I have a drinking problem and told me he wants me to see a doctor. Do I have to go? Can the boss get medical information about me from the doctor?

Answer: The only times the County can *compel you* to see a doctor are 1) if there's some question about whether you are physically unable to perform your job or 2) if you've been disciplined, and visits to the doctor are part of the settlement. If you are required to see a doctor for one of these reasons, the County's Personnel and/or Risk Management Department will have access to the information.

The decision about whether to cooperate with your bosses' suggestion depends on your relationship with him. Maybe he is truly trying to help you with a problem; maybe he's just a meddler. Either way, it probably wouldn't hurt to take his advice. After all, the way he views you may have considerable effect on your work life.

Question: I work days and I am thinking about taking a second job working evenings and weekends. Can the County stop me from doing this?



Answer: The County has the right to know what other work you're doing to insure that there's no conflict of interest. They also want some assurance that they won't be made liable for an injury you may sustain in someone else's employ, so they will probably require you to sign a waiver. After that, you have the right to do what you want with your free time, with one possible exception: if you are on standby or beeper as a condition of employment, you must be available to return to your County workplace when called.

Question: My supervisor called me into a meeting. I don't have any idea what the reason is. Do I have to go?

Answer: Yes, but if you believe that you may be disciplined *or questioned* with the possibility of later discipline, you have the right to a representative. You have every right to *ask* about the purpose of the meeting (or have your representative ask) prior to attending.

ASSOCIATION MEMBERS NOW HAVE ACCESS TO FREE LEGAL SERVICES

As part of our agreement with our staff, members are now eligible for assistance from attorney or John Stanton with *any* of the following legal problems:

1. Small Claims Court
2. Family Law (divorce, child custody, guardianship, etc.)
3. Workers Compensation
4. Estate Planning (Wills and Trusts)
5. Bankruptcy
6. Personal Injury
7. Real Property (interests in land)
8. Department of Motor Vehicle hearings
9. Unemployment Insurance hearings
10. Criminal Law

This service does NOT include representation in Court, but does include evaluating your case, and up to two hours' of assistance in resolving it. There is no limit to the number of cases you may bring to them, and all conversations are confidential.

John has advised us that the majority of the time, people don't really need a lawyer; they just need simple advice and a little help. If you need formal representation, however, he will refer you to a reputable attorney in that field. John is at 714-974-8941 or stantonlaw@hotmail.com.

Association Members Have Access to "Know Your Rights" Library

DON'T FORGET: If you are a REAP Member, you may order information on *any* labor or employment subject. Our legal staff at City Employees Associates are making their bank of 1100+ "Know Your Rights" articles available to you. General topics include:

* **Your "Skelly" (Disciplinary Appeals) Rights**
* **What To Do About Understaffing and Out-of-Class Problems**

* **Layoffs and the Law**
* **"But I'm Sick...You Mean They Can Fire Me?"**
* **Your "Weingarten' (representational) Rights**
* **How Workers Compensation *Really* Works**
* **Privacy Rights of Public Employees**
* **The State of the Law on Drug and Alcohol Testing**
* **Overtime Law: The Fair Labor Standards Act**
* **"Can they Give My Job to a Part-Timer?"**
* **Discrimination and Harassment in Public Employment**
* **What is a Grievance? -- and What Good Is My MOU?**
* **When Do I Need a Lawyer? (for a work-related problem)**
* **City Employees Fight Back Against Contracting Out**
* **The F.M.L.A, the A.D.A, Clinton "Portability Law," etc.**
* **Laws Affecting your Personnel File, Retirement Plan, Health Care, Vacation, Safety, Free Speech etc.**

If you would like information on these or other subjects, please fax Robin Nahin a note at (562) 433-1264 or email: cea@cityemployees.net. <u>There is no charge for this service</u>; our goal is to educate all public employees about your rights on the job