Regional Employees Association of Professionals May 2016 News

THE DECERTIFICATION OF SEIU721

Our window of opportunity has finally arrived! All of us have waited for the past 2 ½ years for this day so please don't lose steam now! We are the "David's" in this fight against a Goliath and it will take ALL of us to make this decertification a reality.
Between June 3rd and July 3rd we need to gather as many signatures from SEIU represented employees as possible. The 3rd of July is a Sunday so we need to have all signatures turned in no later than close of business on July 1, 2016. If you work in the jail, see about getting signatures from the Courts. If there is another county building close to you, forego a lunch and get signatures. WE NEED TO COLLECT AT LEAST 40% OF THE SIGNATURES OF EACH BARGAINING UNIT. THERE ARE 6 BARGAINING UNITS. IF WE RECEIVE 40% FROM THE PROFESSIONAL BARGAINING UNIT, ONLY THE PROFESSIONALS WILL RECEIVE DECERTIFICATION BALLOTS. CERTIFICATION PETITIONS (to join REAP) and DECERTIFICATION PETITIONS WILL BE EMAILED TO YOU WITHIN THE WEEK. THIS IS OUR ONLY SHOT TO MAKE THIS HAPPEN……SHARE THIS NEWSLETTER WITH ANY SEIU REPRESENTED EMPLOYEE!

WHY ARE PUBLIC EMPLOYEES UNDER ATTACK?

By Robin Nahin, CEA Staff

People have mostly forgotten what Martin Luther King was doing in Memphis the week that he was shot. He was walking a picket line with city's sanitation workers. King concluded that the real battle lines were not between blacks and whites, but between the "haves" and the "have-nots." In 1968, when the gulf between the rich and the poor was much narrower than it is today, he believed labor unions were the most promising vehicle for bringing working people into the middle class.

Not long after King's assassination, the City of Memphis recognized the union, and gave the sanitation workers a decent contract, including retirement benefits. In the 1970s and 1980s, Michelle Obama's father was a trash collector in Chicago who made enough money to support two kids and a stay-at-home wife. Both his children went to Princeton. **Today, two people working full-time at a public agency job can barely scrape together a decent living; much less send their children to college.**

Public employment has been "the Great Escalator," enabling working people to bootstrap themselves into the American Dream. In the past, community residents always appreciated their "public servants" … teachers, firefighters, trash collectors, library staff, maintenance crews, recreation staff, etc. These are the people who make our neighborhoods civilized and comfortable. It's truly shocking that this has been nearly forgotten: that public employees have become the scapegoats of the new millennium. And it's shocking that their incomes have been allowed to drift down so far that they are, largely, are no longer in the "middle class."

How did this happen? How did we go from one income supporting a whole family just 30 or 35 years ago, to two incomes barely making ends meet? Where did this myth that "public employees are overpaid" come from? ***Who decided that public servants are suddenly Public Enemies,*** sucking down the resources of the rest of the citizens? **What are the *real* facts, and how did they become so distorted?** Here are some answers….

FIRST OF ALL, WORKING PEOPLE IN GENERAL ARE A LOT POORER THAN THEY USED TO BE. The fact that the middle class is disappearing isn't news any longer; everyone agrees that with the rising cost of living and declining value of jobs, the middle class has become smaller. Most employers no longer provide retirement plans; many no longer provide health care. ***So, since most public employees still do have retirement plans and benefits, they must be middle class right?***

Well, no. In truth, the actual VALUE of your "total compensation" has fallen steadily. While it's TRUE that the dollar amount of your paycheck is higher than it was 20 years ago, the value of that dollar has not kept pace with inflation. For most of the last generation, the cost of living has been galloping forward while your paycheck remained stagnant. The Recession exacerbated this. For most of the last 8 years, public employees received very few cost-of-living increases, if any.

When it comes to benefits, if you're a public employee in California, *today,* you are probably paying most of your own retirement contribution, AND a big portion of your monthly medical premium. If you have a family, you are likely to be paying hundreds out of pocket each month – and your plan may be full of loopholes (called co-pays and deductibles.)

Relatively speaking, though, most public employees have BETTER benefits than most employees. The Recession took *their* retirement plans away completely. Forever.

So YOU must be RICH, of course! And THEY are SUPPORTING you, with THEIR taxes. In fact, YOUR BENEFITS are bankrupting THEIR agency! ***Where do they get this idea?*** Your medical and retirement plans haven't gotten better. It's obvious that they have gotten *worse* -- and the taxpayers are paying a much lower percentage of them than ever before. So, why are they so mad at you? ***How did you manage to become such a huge public burden?***

A POLITICAL SCAPEGOAT?

Does it sound paranoid to say that there has been a deliberate effort to make YOU a political target"? Because it's completely true: ***public employees are the perfect scapegoat for those political interests*** who want to deflect attention from what is REALLY happening to our economy. They are conducting a successful media campaign, in the name of "the taxpayer." They are trying to knock off two targets with one stone: public employees (which means taxes) AND unions (because public employees are the last bastion of thoroughly unionized workers in the country.)

Rather than acknowledge that almost *everyone* is falling out of the "middle class," the right-wing political machine is doing an excellent job of convincing the angry, not-so-educated public that YOU are the CAUSE of their problems!

The fact that YOU ALSO PAY TAXES is irrelevant. The fact that the average PERS retiree earns only $28,400 per year -- irrelevant. The fact that the very wealthy, who don't work at all, and pay the lowest capital gains tax in history - also, irrelevant. The people driving this media campaign have a range of "storylines," all pointing to the same

conclusion: public employees are bankrupting the country! ***For example…***

Public Employees Earn Far More than Private Employees…

This IS somewhat true. Not because *you* are paid so well, but because so many other decent-paying jobs have disappeared. Increasingly, our economy is becoming dominated by fast food and Walmart jobs.

In truth, there is little basis for comparison between YOUR job and most private sector jobs. For example, 55% of public employees have college degrees; only 23% of private jobs require degrees. **However, when you compare jobs in the same occupations, private companies pay better.** Think engineering or IT. Think construction, accounting, or law. Compared by occupation and education, public employees today earn an average of 12% less than their private company counterparts.

Retirement Debt is Crippling Your County?

Ridiculous! The fact that so many people believe this shows how effective the scapegoating campaign has been. Retirement benefits are funded by the employer AND the employee.

In the '90s and mid-2000s, CalPERS was making so much money *on your money,* in the stock market, they allowed most agencies to stop making payments at all. This phenomenon was called "Superfunding," and agencies were told that there was enough money in their accounts to pay for all retirees' needs until the year 9999! When the Recession hit, however, PERS lost three-quarters of these "savings," which meant that agencies had to begin making (normal) retirement contributions again. Rather than increase revenue, they passed PEPRA, a new retirement law, in 2012. PEPRA not only made spiking and double-dipping a lot more difficult, but it slashed the retirement benefit for new employees AND allowed employers to bully current employees into pick up most of their own expenses. This "burden" of your exorbitant pension plan is 100% myth. PERS' stock market winnings have all come back, and the fund is solvent.

Unions Drive Up the Cost of Labor…

Well, yes. We think that's the point. Contract negotiations get people more money. In those states (mostly in the South) where it is nearly impossible for public employees to organize, they have much lower wages and benefits. And as "taxpayer revolts" are taking over state governments in the Mid-West, unions will decline – and along with them, union wages.

Neither employees' unions, nor their retirement plans are the cause of California's agencies' financial problems. Those problems are caused by the weaknesses of local economies and the subsequent inability (or refusal) of residents to pay taxes. **In fact there is no connection between the presence of public employees' unions and the size of a state's deficit.** Some states which deny employees the right to bargain (such as North Carolina and Arizona) have HUGE public debts, while others, such as Massachusetts and California, have strong labor laws and low deficits.

HAS THIS ANTI-EMPLOYEE CAMPAIGN PEAKED?

Time will tell. The answer really depends on the economy, the mood of the public and on how well public employees themselves explain their situation. **In truth, public employees are their communities' *helpmates*.** There is no justification for the attack. As the economy recovers and more people hold decent jobs, perhaps the public's anger will decline. Or perhaps their insight into the truth will improve. **Overall, The Taxpayers would be much better served by trying to organize and improve *their own situation, rather* than attacking yours!**

Governor Signs Laws Aimed at Narrowing Income Gap

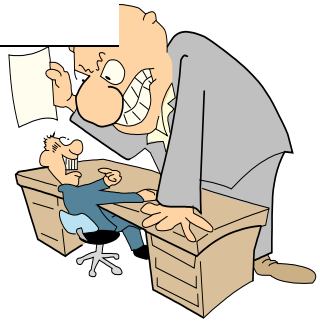
Continuing a wave of reforms aimed at narrowing income inequality, Governor Brown signed a new law in March to increase State Disability Pay for people who must leave work to care for family members. AB 908 came on the heels of a much more controversial law which will raise the minimum wage to $15 per hour.

California is one of only four states in the country with a State Disability Insurance System that includes paid family leave. Under the new law, which will take effect in 2018, people who participate in SDI may now receive 60% to 70% of their incomes if they need to take time off to care for a new baby or a seriously ill family member. The previous rate was 55%.

Public agencies are not required to participate in the SDI system, although many do. **The subject is completely negotiable.** Agencies that don't belong to SDI usually do provide private disability plans, although these plans rarely include a paid family leave component. The SDI program is funded entirely by employee contributions; private plans are generally paid by the employer.

The most frequent reason that employees use SDI is for maternity leave and post-birth bonding. Nine out of ten California employees take paid family leave after the birth of a child. There is currently a huge reserve in the fund, which is expected to continue even after this increase in benefits, so analysts predict that the increased benefits will not result in higher costs to employees for many years.

Why You Probably Can't Get Your Boss Fired (Except Under Very Special Circumstances)



The vast majority of supervisors and managers achieve their positions because they work hard, are well versed in their fields, and are fair and reasonable in their dealings with others. HOWEVER, every once in a while there's the one guy (or gal) who belittles subordinates, is compulsively critical, plays favorites, micro-manages, crosses personal boundaries, or just plain bullies people.

Their subordinates vary widely in response to the mistreatment. Some people are good at letting nasty behavior "roll off their backs." Some get nasty in return. Some get sick. Some talk to their co-workers or their union reps or their therapists. Some quit. **But most people tolerate harassment or abuse for a long period of time, and only decide to file a formal complaint when they are so frustrated, angry, or depressed that they are at their wits' end.**

You DO have the right to file a grievance over mistreatment on the job. Your grievance procedure is the enforcement mechanism of your Association's MOU, and most contracts include language, somewhere, about employees' right "to a safe and harmonious work environment." Further, most agencies also have anti-harassment policies, which tell you how to file a complaint, with or without the assistance of your union.

The "remedy" to a harassment complaint is pretty simple: it is the cessation of the abusive work conditions. In other words, your goal is that the "safe and harmonious work environment" be restored. *This remedy is well within reach.* Thanks to some strong laws and legal decisions of the 1980s and 1990s, victims of workplace abuse can force their employers to STOP the behavior, if they have taken the time to document the problem.

What they usually CAN'T achieve, though (at least not through the grievance procedure) is "justice." They can't make sure the abuser is punished. **The grievance procedure is not a court of law, and doesn't have the capacity to "punish" the other guy.** It doesn't even have the capacity to get you an apology. It can only bring you the "cessation of abuse." Psychologically, this may not be very satisfying.

By the time most people decide to file a formal complaint, they are upset and expect to see *consequences*, if not some direct compensation. But a grievance is NOT a legal action against your boss; it's an action against your employer to enforce your legal right to a safe work environment. Once "safety" is restored, you've won! In order to "win" something else, you would need to take your harasser to court.

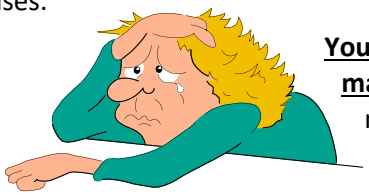
Don't assume there are no consequences! None of this should imply that "bad guys" are not punished. They *are* punished; but you probably won't know it. The County is under no obligation to tell you what discipline may have befallen "the bad guy" as the result of mistreating you. *They only need to make sure it stops.*

Nor is the County obligated to compensate you for your "pain and suffering." In fact, they are not obligated to *acknowledge* it! You will probably never see a report that admits wrongdoing on the County's part, or a letter from anyone that apologizes for your terrible experience. After all, if the County did give you such an admission, you could use this as basis for a lawsuit.

What kind of legal action COULD you take, anyway? First of all, if your workplace makes you sick, you could (and should) see a doctor. If you're sufficiently disturbed, *and the doctor thinks you should take some time off the job,* you should consider filing a workers compensation claim. This is the appropriate "venue" for a "pain and suffering" claim.

Employees who are abused, especially by others who have authority over them (and especially over long periods of time) truly do develop illnesses. Before sexual harassment became illegal and strictly forbidden, women in all occupations and all levels of society tolerated poking, prodding, and being propositioned with little recourse. It wasn't considered harassment to be subjected to lewd remarks, or even threatened with discipline if they didn't "make their bosses happy." And, when they developed symptoms such as sleeplessness, anxiety, and inability to concentrate (all of which contribute to poor performance and absenteeism) these weren't considered medical conditions – and certainly not workers compensation cases.

But all this has changed. Today a wide range of medical conditions from high blood pressure, to digestive problems, to chronic depression may be traced to an abusive workplace.



The most important thing to know, if you have gotten to the point of being made ill by workplace mistreatment, is that you MUST document the situation – *and request relief* – before you file a workers' comp claim. It's a myth to believe that you may simply "go out on stress." Stress claims are suspect; most of them are denied. However, if your illness is real, and you have documented the problem, asked for help, and been refused, you have every reason to file a claim.

So… how *do* you "document the problem and ask for help?" For starters, please understand that while your experience as a victim is highly emotional, there must be evidence. If your boss belittles you or makes inappropriate comments in front of others, you will need to get statements. If he shouts, threatens, or slams doors, there will be witnesses.

If he makes racial or sexual remarks, touches or propositions you, you should tell someone, right away. In any of these circumstances, consider sending the abuser an e-mail, referencing the bad behavior and asking him to stop it. (Be sure to hold on to that e-mail.) If he retaliates by threatening your job, sabotaging your work, giving you a negative review, (or any of a hundred other nasty ways) you should talk to your union staff about a retaliation grievance.

In truth, the best method for dealing with any inappropriate behavior is to be simple and direct: ask the harasser to stop it, and let him know that you are prepared to report him.

So, what happens AFTER you file a complaint? The County is obligated to take an abuse complaint seriously, especially asexual or racial harassment complaint. This means an investigation that may take months. During that time period, you can be fairly certain "the harasser" will be interviewed and, to some extent, warned about the danger of his ways.

You should, at this point, consider that you may have accomplished your goal. The majority of workplace bullies, when told that their jobs are at stake, take that threat seriously. They DO correct their behavior. You may have won. The harassment is likely to cease. …and you may never know what happened.

There is not a lot of psychological satisfaction in

this process. You tolerate mistreatment, often for months, and then… nothing happens! The mistreatment may have stopped, but you are left hanging. You might even be worried it will start happening again.

Victims of long-term trauma, in the form of attacks on their work and their self-esteem, have a hard time settling down without some acknowledgement of what they've been through. They often see the harasser carrying on "business as usual," while your normal impulse for "justice" remains unsatisfied. In truth, there is little you can do, except perhaps see a therapist. **The County is not going to tell you what they did to the "bad guy."**

WHAT IF THE HARASSER DOESN'T STOP?

On the other hand, there ARE some circumstances when you CAN get your boss fired. If he hits you, stalks you, rapes you, screams at you, makes a credible threat to hurt you, locks you in your office, throws tools at you, or picks the work up off your desk and throws it out the window -- all of which have been known to happen – then he *will* be fired, if not prosecuted criminally.

For those harassers who *don't* stop after a strong warning or discipline (because their behavior is compulsive or their desire to retaliate outweighs their effort to "be good") you may need formal representation. This is what you pay dues for: call your Association's staff. As a remedy to this kind of grievance, **you should insist that the County protect you from any contact with the harasser and/or bring in professional "team builders" to insure everyone's safety.**

Workplace Harassment is declining (Really)

Having said all this, you should know that violence and harassment in the workplace are actually far, far less common than they were a generation ago**.** This is due to laws (and lawsuits!) that brought abusive behavior into the open *and made it expensive.* Hundreds of public agencies have paid millions of dollars for their failure to pay attention to employees' legitimate complaints. Today it's the rare employer who ignores such a grievance, especially if it holds racial or sexual implications. In fact, the law now *requires* employers to investigate certain kinds of allegations and address them immediately. Further, most workplaces require that managers take harassment and diversity training programs. This has generally been effective; overt racism, sexism and other "uncivil" behaviors are now virtually eliminated. **What remain, NOW, are the covert and most compulsive bad behaviors… the hardest to root out…**

Bottom line: we may not have eliminated ALL the "bad apples," but at least they are fewer than before. The rest, unfortunately, will need to be picked from the barrel, one at a time.

WHY YOU PROBABLY CAN'T SUE YOUR BOSS, EITHER

Actually, you *CAN* sue your boss, as an individual, in court. Unless he has ALSO committed a crime which violates the law, your lawsuit will be a civil matter. To sue in court, you'll need a lawyer, and unless you can make a case that your boss did so much damage to you that you are owed a great deal of money, the cost of the lawyer will probably exceed any reward that a court would grant.

Most "damage" falls into the arena of two kinds of loss: 1) loss of your health or 2) loss of your money. If your boss caused you to become sick or he physically attacked you, your primary "remedy" is through the workers' compensation system. *In other words, the courts generally hold your employer responsible for your bosses' actions.*

If your boss stole your money or destroyed your car or property, you CAN sue him, but if these events took place on the job, the County is, once again, responsible. If he made you so crazy that you quit your job or

were fired, you have the right to appeal per the County's grievance or disciplinary appeals procedure.

In other words, the damage done to you by your employer has to be extraordinary in order to establish grounds for a successful lawsuit. There are, however, many attorneys who are happy to take your money to file an unsuccessful lawsuit. These are called "pain and suffering" cases and, all too often, the people who file them are often preying upon people whose emotional need "to get even" may be outweighing their logic. These lawyers may charge you thousands of dollars with little hope of any return on this investment.

The truth is that if you haven't experienced actual financial loss at the hands of your abusive boss, there is probably no money "owed to you." If you do sue, and are able to prove that you lost work time, or suffered serious illness due to a hostile environment created by the supervisor, the courts will probably direct you back to the workplace for a remedy.

The best way to know whether you have a "good" lawsuit is to find an attorney who will take your case on contingency basis. This means no "up-front" expenses to you. The lawyer only wins money when you win your case…

Did You Know…

County Must Pay Current IRS Mileage Rate -- or Risk Paying A Whole Lot More

Question: Our Department pays mileage to people who drive their own cars on the job, but the rate hasn't gone up for years. We're receiving $.38 per mile, but I know the current IRS rate is $.54. Is this legal?

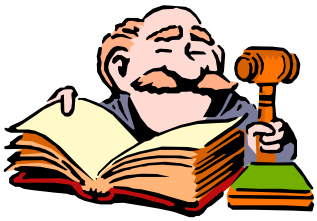
Answer: Believe it or not, it is legal for an employer to reimburse employees for mileage at a rate which is lower than the current rate established by the IRS. **However, if the employer chooses to do this, it must accept liability for any loss or damage to the employee's vehicle that occurs while he/she is on the employer's business.** Here's why:

The California Labor Code Section 2802(a) requires employers to reimburse employees for "all necessary expenditures incurred by employees." This includes the costs of damage that may happen to an employee's vehicle "in direct consequence of the discharge of his or her duties." On the other hand, the State Division of Labor Standards Enforcement (DLSE) has said (in Manual Section 29.2.4 Mileage Allowance) that an employer's use of the current IRS mileage allowance may substitute for liability for the employee's car.

The DLSE takes the position that the payment of a reasonable mileage reimbursement covers all operating costs incurred by the employee in the operation of a personal vehicle for business purposes. It defines the mileage reimbursement used by the IRS as "reasonable." Where this reimbursement is made, the employer is no longer responsible for damages or loss due to accident or theft.

If there is no agreement to pay a "reasonable mileage reimbursement", the employer can be required to reimburse the employee for the actual costs incurred in operating the vehicle in the

service of the employer: including losses due to accident or theft. Consequently, absent an agreement for a reasonable mileage reimbursement, the employer cannot insist that an employee pay for insurance to cover potential losses or damage incurred when the employee uses a personal automobile for business purposes. **Bottom line: if YOUR employer doesn't pay the full, current IRS rate for mileage, you may want to share this information with them…**



MAJOR LEGAL DECISIONS

The following are significant decisions involving the rights of public employees. If you have a *specific* question or problem, please call your Board Rep or our professional legal staff at 562-433-6983 or cea@cityemployees.net.

Fact Finding is Available for ANY Bargaining, Not Just MOU Negotiations

When the state legislature established the right to fact-finding for "local agencies" in 2012, it was unclear how the new procedure would be applied. Fact-finding gives unions the right to call for a panel of "investigators" to render an opinion when negotiations have an impasse. But what kind of negotiations does the law apply to? Must it be overall MOU negotiations, or could fact-finding be useful for all kinds of negotiable disputes? Bargaining over changes in personnel rules or classification studies or post-layoff "impact" negotiations?

Now, in a big win for public employees, a California court of appeals has rendered the opinion that PERB was correct in an earlier ruling: fact-finding may be used to resolve ANY impasse arising from disputes over ANY negotiable matter. This decision arose when two different employers, the San Diego Housing Commission and the County of Riverside each challenged a decision by PERB (the Public Employment Relations Board) allowing a union to compel its employer to go through fact- finding when it reached an impasse in negotiations.

In the San Diego case, the Union requested fact-finding over the impact of the Commission's implementation of layoffs. The Agency refused because the law allows employers to make the decision to lay off without bargaining; only the *effects* of layoffs are negotiable. In *Riverside,* the County wanted to implement an invasive IT policy, requiring background checks, to which the Union objected. Again, PERB told the employer that it must allow the union to go through fact-finding.

In both cases, the employer challenged PERB's decisions in Court – and lost. The Court spoke clearly: fact-finding is a procedure that improves communication, and maximizes the possibility that the parties may settle their differences cooperatively. It is only advisory and doesn't interfere with employers' ultimate ability to implement a 'last, best offer.' It's a GOOD thing and should be available for ANY impasse. Employers cannot refuse to participate, even if the bargaining topic is minor… even if the negotiations are only over the *effects* of a decision which is a basic management right.

State May Withhold Funding to Charter Cities that Evade Employment Law

Five cities in San Diego County decided that they could refuse to cooperate with the state law on prevailing wage, on the grounds that they were charter cities. The prevailing wage law says that public agencies cannot pay less for construction work than private sector employers in the same field. But many cities argue that, by becoming a *charter* city, they may make their own laws, and are exempt from statewide labor law.

State legislators responded to the five cities' evasion of the law by passing a *new* law: one which withholds state money to agencies that refuse to pay prevailing wages. The cities sued, arguing that the state's withholding was illegal and violated the entire intent of the charter city movement. The Court disagreed, pointing out that if a city wishes to ignore state law, the state may respond by refusing to supply funding for city construction projects.

State Supreme Court Says "Employees Have the Right to Sit Down!"

In California, the right to have a seat at work has been a contentious issue. For years, employers and employees have disagreed over the interpretation of the California law that says employers must provide a seat to employees when the nature of the work "reasonably permits their use."

Employers have argued that providing seats should be based on the employees' particular situation. Some jobs, they insist, just require the employee to stand up. However, in March 2016, the California Supreme Court sided with the employees (at CVS Pharmacy and Chase bank) who were suing. It said, "If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, then the employee has a right to a seat." The Court also held that employers who do not provide suitable seating have the burden to prove that no such seating is available.

Can Public Employees Picket? (Yes…)

When things aren't going well at the bargaining table, employees often want to know what leverage they hold, in order to force their employer to offer a more reasonable contract. The classic union "work actions" are the strike and the picket. Public employees (who are not police officers) CAN strike and CAN picket their workplace. The strike is, literally, a work stoppage: a potent weapon in the private sector, where a stopped conveyor line could mean plunging profits. But, during this time of public antagonism, strikes can do more harm than good to public employees' union. Picketing can be a different story because the action draws attention to the employees' concerns without (usually) inflicting any damage on the employer.

We say "usually" because in classic labor management relations, the picket WAS intended to inflict damage. Unions "threw up pickets," in order to prevent the public (which used to include lots of members of lots of unions) from crossing into a place of business. The goal was to impact the business's sales. The classic in many of our lifetimes was the "Grape Boycott" in the mid-60s, where farmworkers picketed outside supermarkets, to win support for their movement – and to interfere with the sale of grapes.

Informational Picketing

In public agencies, which generally aren't "selling" anything, employees retain the right to picket, but generally for educational purposes. Unions are trying to influence the public to SPEAK UP, especially to their elected officials, about workplace abuses or unfair bargaining. The legal basis for this derives from both the State and Federal Constitutions, which guarantees you the right to engage in speech on "matters of public concern." These matters might include your "loss of confidence" in the Agency management, or its bad decisions in the delivery of public services -- or its anti-employee bias at the bargaining table.

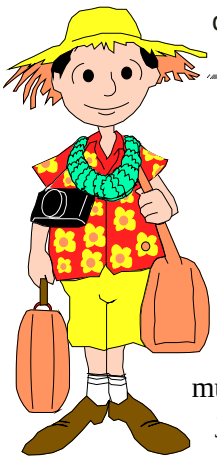
Perhaps the best examples of successful picketing in the public sector in California come from the teachers strikes of the 1980s and 1990s. The public was *heavily* influenced by the stories teachers told about staff turnover and horrible conditions *affecting children* in the teachers' workplaces. Since then there have been a number of key PERB decisions affecting YOUR right to picket:

First of all, your right to picket "peaceably and truthfully" was affirmed in *City of San Jose v. Association of Building, Mechanical, and Electrical Inspectors,* in 2010. Unlike the private sector, public employees' pickets must be "non-disruptive." This means that members engaged in a picket can't withhold services, block access to or from the facility being picketed, or engage in disruptive or violent behavior. (**Anything OTHER than non-disruptive picketing may be grounds for discipline.)**

It also means that statements on signs and leaflets must be truthful and should address collective issues rather than individual grievances. (A contract dispute is a collective subject matter.) Usually, informational picket materials are accompanied by statements explicitly saying that the picketing is not a strike and no request is being made to cease doing business with the picketed employer.

The Timing of a Picket Line

There is no legal requirement that your union provide the employer with notice of the picket, but doing so without any notice could be seen as 'disruptive.' Most bargaining ground rules include some language prohibiting "work actions" unless there is a declaration of impasse and/or requiring the union to notify the employer in advance. A lot of the "power" in a work action stems from the *threat* of the action, so sudden pickets don't necessarily accomplish much. Unions have the right to engage in informational picketing during a labor dispute as long as they are also engaging in good faith efforts to resolve the dispute. Informational pickets must be conducted on non-work time (which means lunch breaks or days off or vacation days.)



VACATION PAY: What Does the Law Say? What's Negotiable?

Vacation benefits are voluntary in California. In other words, there is no law requiring employers to provide paid vacation leave. However, IF employers DO provide vacation (and almost all public employers do… at least for full-time employees) then the law does require that this benefit ***be honored:*** it must be paid to the employee, either in the form of time or money. This means that if an employee leaves his job before using up all his vacation, he will be paid off for the remaining vacation, in the same way that he is provided a final pay check. In fact, the California Labor Code considers vacation time a form of "earned wages."

If employees have a union, the amount of vacation they earn, as well as the conditions under which they may be used, saved or converted to money, are negotiable. It's legitimate, for example, for your Association to negotiate methods for vacation sign-ups, so access to the "prime slots" are rotated. It's legitimate to bargain your yearly vacation "cash-outs" – particularly for people who are at maximum accruals. It's legitimate to negotiate *higher* accrual caps, or the right to use "emergency vacation" time. If your employer *has* an existing system for dealing with these issues, it cannot be changed without bargaining. This is the case, whether the system is written in the MOU, or even if it has never been written down at all. An unwritten system is a "past practice," and past practices, once they have been widely accepted and acted-upon, may become enforceable.

"Capping" of Accruals is Legal and Negotiable

Although paid vacation time can be considered a form of paid wages, employers do have the right to "cap" the amount of vacation leave you may earn (although they may not change the cap without "extending the opportunity to meet and confer" to your Association). It is also legal for the employer to impose a "use it or stop accruing it" policy, requiring employees to use vacation or stop accruing it when they reach the cap. It is NOT legal, however, for employers to refuse to provide pay or money for time which employees may have earned above the "cap." In other words, it is up to the employer to monitor employees' use and accruals of vacation. Employees can't be penalized for accruing more vacation than their employers wanted them to accrue.

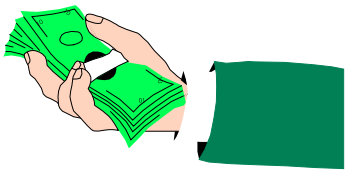
Accrued Leave Can't be Waived or Forfeited

Just as earned wages cannot be forfeited by an employee, vacation cannot be forfeited either – nor can it be waived by an employee for failing to use it. In fact, even if an employee knows the employer has a "use it or lose it" policy and voluntarily refrains from taking vacation, he does not waive his right to be paid for accrued but unused vacation. (*Henry v. Amrol, Inc.* [1990])

Under the law, vacation time is earned proportionately as labor is rendered. In other words, vacation pay is not considered to be an inducement for future services, but is compensation for *past* services. (*Suastez v. Plastic Dress-Up Co.* [1982]) In *Suastez*, the employer had a policy that one week of vacation time was earned after one year of employment. When an employee challenged this policy, the Supreme Court held that vacation "vests" on a pro-rata basis as it is earned. Thus, after a month, an employee has earned one-twelfth on his yearly vacation.

However, employers ***can negotiate*** vacation vesting policies that prevent vacation benefits from vesting for a period of time after hire. For example, most public employers have a probationary period, during which vacation time may not accrue at all.

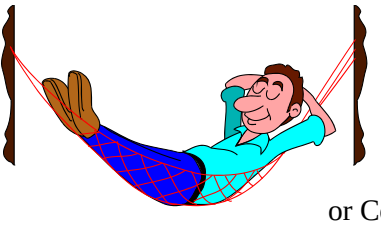
Vacation Time is paid at the employee's current wage rate



Vacation pay is paid at the employee's current (or final) rate of pay, and not their rate of pay when the vacation time is accrued. (Labor Code § 227.3) This is so even though vacation pay is considered a form of deferred compensation. It is illegal (but not unheard of) for an employer to reduce an employee's rate of pay shortly before termination, as a tactic to reduce the value of the vacation time to be paid off. In fact, an employer can never reduce the amount payable for accrued vacation time by demoting an employee or reducing his wages, even if the employee is being reduced in pay for legitimate reasons. To do so would cause a forfeiture of earned wages. (The law specifically "prohibits a policy which allows the employer to reduce his employee's wages for services after the service has been performed.")

General Leave Policies

Some employers make no distinction between vacation time, sick leave, floating or "personal days," etc. They simply provide their employees a set number of paid days off during the year which may be used for any purpose. These policies are negotiable, but under the law, ALL of the days in a "General Leave Bank" are considered to be vacation time: equivalent in value to wages which have been earned.



"Which Time Off Should I Use?"

When employees know that they will need to take time off the job, they often have the choice about whether to use accrued "comp time," personal time, sick leave or vacation. The choice is often complicated not only by the value of the leave under the law, but by the rules in the MOU or County's policies and procedures. As a general rule, you should always, first, use the leave for the purpose it was intended. In other words, you should use sick leave when you are sick. After that, however, if you have options, you should read your MOU closely and perhaps consult with your union rep.

For example, if you know you will be off the job for months due to a pregnancy or medical condition, it might be wisest to use your "personal time" and sick leave first, since these are unlikely to have monetary value. You may also want to use it in partial increments, "stretched out" with some unpaid time, if necessary (so you are never entirely in unpaid status, thus never failing to accrue benefits). Comp time and vacation should be the *last* form of leave to use up. Also, if the County has short-term or long-term disability plans, beware of "helpful suggestions" that you use up your accrued leaves before going onto the County's plan. You could well be burning up "money in the bank" for no good reason at all…

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 at (562) 433-6983, cea@cityemployees.net.

Question: Due to the time I took off for paternity leave, my anniversary date has changed. This new date has affected my evaluation period, and my delayed my pay increase! Is it normal for employers to alter the anniversary date because of a family medical leave?

Answer: Yes, the County can move your anniversary date back by the amount of time that you were in unpaid status. You are entitled to any "unconditional pay increases" that occurred during your FMLA period, like a cost of living adjustment. But the County isn't required to give you pay increases contingent on length of service for time you weren't working. So, in this case, the County can factor in the unpaid time you took off for paternity leave and adjust your anniversary date. But if you used sick or vacation time to cover all of you paternity leave, your anniversary date can't be moved.

Question: Can the County require that all floating holiday time be used by June 21st because it's more convenient for the Payroll Department? In the past, we have always had until June 30th to use this time.

Answer: If the MOU actually **says** "June 30" then the County cannot change this without bargaining. If there is nothing in your MOU and if there's a "past practice" that you have always had till June 30 – *and you are able to prove that this is an established practice* -- then the new date is a change which your union could object. If there is no clear contract language or provable practice, then the County *might* be able to make the change by calling it an administrative decision. These "disputes" are usually easy to resolve. You might call your Association rep for help.

Question: Can management tell us who we can or can't go to lunch with? There is a person in our Department who doesn't seem to want to socialize with the rest of us. But our Director is saying we must invite her to lunch. Isn't what I do on my lunch hour my own business?

Answer: Yes, your companionship at lunchtime is absolutely your business. On the other hand, it sounds as if your director is concerned that one of the employees isn't feeling integrated into the department. You might give some thought to whether this is true and whether you want to be helpful. It never hurts to try to keep everyone happy.

Question: Our boss (female) has a very annoying habit of checking us (females) out when speaking to us individually. I mean from head to toe. She literally looks you in the eyes and then her eyes run down the length of your body to your feet and up again. I'm not suggesting that it's sexual in nature, but it does make us feel very uncomfortable. Is there anything we can do?

Answer: It's unlikely that there's anything illegal or "grievable" about this behavior, but here are a few suggestions: the next time your supervisor does this, just ask her if anything is wrong. This will draw her attention to the fact that she's doing this behavior.

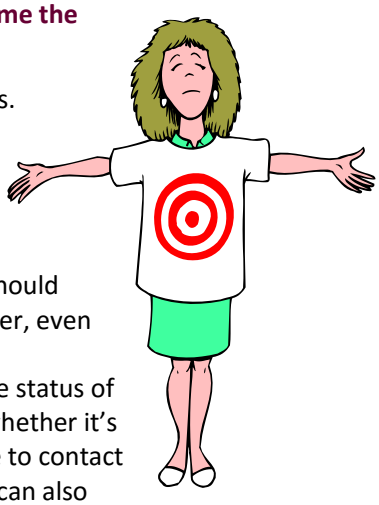
She may not realize it – or she may not realize that it makes people uncomfortable. If she asks *why* you're raising the question, you might just say, "Well, the way you're looking at my skirt, I thought something might be wrong." This just might make her realize her behavior is inappropriate.

If you conclude that this behavior is deliberate (that she's trying to make people feel diminished by "assessing" you this way, you should realize *this is her problem*, not yours. If she does it to everyone, no one should take it personally. Recognize that it's just an irritating aspect of dealing with this person – and try to ignore it.

Question: I am going to be retiring soon and will be moving to another state. Can you tell me how I will be taxed on my PERS benefit? Will I pay California taxes or the taxes of my new state?

Answer: California doesn't tax pension income for retirees who move out of state. It is probable that you would have to file a return and pay taxes for the portion of the year that you still lived in California. But after you have lived in another state for a full year, you no longer have to file a return for California.

Question: I was accused of mistreating a subordinate, which I DID NOT DO. There was a full-blown investigation, which ended almost a year ago, but no one has ever gotten back to me with the findings. How long should I wait? They *do* have to give me the results of the investigation, don't they?



Answer. In this case, no news is good news. Nothing bad happened. Unless management proposes discipline, they have no obligation to get back to you with the findings of their investigation.

With the passage of this much time, you should assume that you were exonerated. However, even being subjected to an investigation can be upsetting. If you have any doubt about the status of the case, you DO have the right to know whether it's over. If you REALLY want to know, it's fine to contact your Human Resources Department. You can also ask one of your representatives to research this for you.

Question: I am resigning from my City job and was just told I'll be receiving my final paycheck "within a few weeks." I looked on the website for the State Labor Commission and it says that employers must provide final checks within 72-hours….What can I do?

Answer: You're not going to like this answer. Many sections of the State Labor Code do not apply to public employees – and this is one of them. Public employers have the right to provide last paychecks on the basis of their "normal pay schedule."

Question: I work nights as a dispatcher and I am going to therapy several days per week, during the day, for a work-related injury. The City says that they do not have to pay me overtime to go to these appointments. Is that true?

Answer: Unfortunately, this is true. Under the current workers comp law, once an injury is no longer a matter of urgent care, and an employee is going to therapy or doctors appointments, the time off does not have to be "injured on duty" time – IF it is less than a full day. If your appointments did occur during your normal workday, you would probably need to use sick leave.