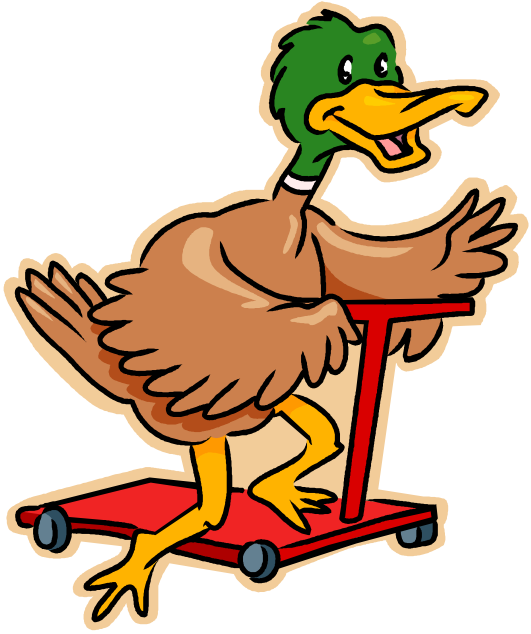


Regional Employees Association of Professionals August 2016 News

WE HAVE FILED TO DECERTIFY SEIU!

Last month, our staff at CEA submitted our petition to the County to decertify SEIU in 4 bargaining units: the Professionals, Paraprofessionals, Supervisors and Registered Nurses. We are awaiting the County's response.

Our petition did NOT include sufficient signatures to meet the County's threshold for an "acceptable" filing. This is because the County's Rules are skewed in favor of incumbents. It requires that all signatures be gathered in a 30-day period, and that the "showing of support" (signatures) be 40% of the bargaining unit.

Both of these threshold are unreasonable, particularly given the size of our County, so we have a complaint about the "unreasonable rules" at PERB (the Public Employment Relations Board.) The complaint process will take several months, but we DO expect to win. The end result should (we hope) be the right to collect signatures for 180 days and a "threshold" of only 30%.

In the meantime, ***we are continuing to gather signatures.*** If you have not yet had a chance to sign the cert/decert petitions, please email and let us know which unit you belong to, and we will send you the appropriate document.

Thanks for your support. Please call our staff at CEA if you have questions: 562-433-6983 or cea@cityemployees.net.

Why Our Union Decertified SEIU
Jerry Williams President, Culver City Employees Association

Dear Friends in the Labor Movement:

Our union decertified SEIU several years ago. I have been asked to explain why. There were 3 major reasons:

First, SEIU's dues were very high and we did not seem to receive any service for our money. We almost never saw an SEIU rep. When we called the Union office we were forwarded to a "call center." It usually took days – or weeks -- to get a response.

As president, I was told that I was supposed to represent my co-workers, as a "steward," but I was not provided any training for this. I was worried about making mistakes in legal matters and not comfortable going up against Management. This was not a job I thought I should be doing! Our members wanted to be represented by professionals, not co-workers. I was shocked that our dues didn't provide us with this assistance.

Secondly, SEIU didn't seem concerned with OUR needs. When we did see a rep (for contract negotiations) he did not seem very prepared, or very skilled. His speaking and writing communications were poor. He didn't remember our issues. He would not spend time with our members. He talked mostly about national politics and why we should contribute more to the COPE fund. In the meantime, we ended up with bad contracts. Our complaints to the Regional Office about this fell on deaf ears.

Third, with SEIU we felt as if we had no control. The dues went up without our consent. We had none of our own money. We wanted to get involved in local politics, with our own Council; but SEIU was no help. They are focused on national politics. The MOU was signed by a small group of people. People with grievances didn't get help – except from me.

Misinformation. SEIU talks a lot about power, but I don't think city management respected them at all. Even after we voted to decertify them, they tried to continue to take dues from us. CEA provided an attorney to finally get rid of them.

After we got rid of SEIU, we re-formed the Culver City CEA, we hired City Employees Associates to help with labor relations issues. Their assistance has saved us from disaster. They initially charged us $14 a month. Last year, the fee went up to $15. We collect a few dollars on top of this for other union business. CEA cannot raise our fee without our agreement. We can terminate them with 30-days' notice

We elect our own leaders and bargaining committee, but CEA does all the grievances and other legal work. When our members call their office, there is always a rep to help them. They come to

our workplace to handle grievances or discipline cases. They provide a monthly report on all our issues and only bill us when the month is over.

We are bargaining for a new MOU right now, and our CEA attorney, Brian Neihaus, is a very competent negotiator. He also attends membership meetings, so **everyone** knows what is going on. Brian doesn't TELL US what we are doing, the way the SEIU rep did. He ASKS us about our needs. He has no vote on the bargaining committee. He's simply our advisor and spokesperson. Bargaining was very hard last year. Brian stood up for us, knew the contract, explained the law and was completely honest. We don't have to worry about any "behind the scenes" deals as we did with SEIU.

Overall, I am positive that our members would NEVER vote to go back to any of the big unions. Our system is working well. We are happy with our current staff and are very glad that we got rid of SEIU.

Are Permanent Jobs Becoming Obsolete?

The Great Recession took a real toll on public employees. The OBVIOUS impacts were financial: furloughs, pay freezes, shifting the medical burden, etc. But the big, underlying loss (now that we can see clearly back over 8 years of rubble) **is the demise of the permanent job.** Almost all "new" jobs created since 2009 are temps, contractors, "at-wills," interns or consultants. Legally speaking, *they are ALL the same…* and this is as much the case in a city or water district as it is at Boeing or McDonalds.

Here's a key question: have you noticed, in *your* workplace, that there are more contractors or part-timers than ever before? Have you noticed HOW LONG vacant positions seem to stay vacant? Sometimes for months – sometimes *for years* – until nobody even bothers to keep track anymore?

If the answer is "Yes," then your workplace is part of the trend! Public agencies are clearly leaving permanent jobs vacant, while assigning the work to non-permanent (and mostly non-benefitted) labor.

"Alternate arrangements…"

This phenomenon has been recognized for decades. A research paper published jointly by Harvard, Princeton, and the National Bureau of Economic Research entitled "The Rise of Alternative Work Arrangements in the United States" found that the number of "consultants, independent contractors, freelancers and on-call workers" increased by 50% from 2005 to 2015. In fact, **all of the net employment growth in the U.S. during this decade took the form of "alternate work arrangements**." Despite the Great Recovery, we have actually seen a NET LOSS of permanent jobs in the last 10 years.

The Recession, in many ways, obscured a development that started in the 80's. This is when "temps" and part-timers began showing up in significant numbers; this is when PERS first passed a rule to try to control them. Why? Because they jeopardize the retirement system! They didn't contribute to it. They are cheap, dispensable – and (mostly) not unionized.

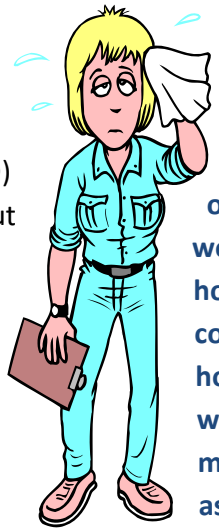
The Recession may have caused many workers to seek "alternative arrangements" when regular

jobs weren't available but employers' "misclassification" of employees as temps, part-timers and consultants was ***deliberate.***

Who are the Victims of Alternate Employment

Interestingly, the Harvard/Princeton study finds the sharpest rise in contract labor amongst the most vulnerable groups: older workers, aged 55 to 75, very young workers, and women. **The percentage of women doing "contingent" labor more than doubled from 2005 to 2015.** Ironically, these are exactly the categories of employees who are most in need of medical and retirement benefits.

What's SO BAD About Being a "Contingent" Worker?



The U.S. Government Accounting Office (GAO) also conducted a study of temporary labor, but focused on the lack of legal protections. It said, "millions of workers who do not have standard work arrangements — permanent jobs with a traditional employer-employee relationship – may not receive benefits, nor have the safeguards that traditional jobs confer, such as job-protected leave under the Family Medical Leave Act." **People who are not considered employees are not even covered by basic state or federal law:** minimum wage, the 40-hour week, sick leave, workers' compensation, privacy, protection against harassment or discrimination, etc. The study warned that the replacement of permanent jobs by "alternate" ones could, in one generation, dismantle the protections that took more than 80 years of law and union effort to build.

The GAO's analysis did not make a distinction between private employers and public agencies, but some generalizations apply to both workplaces:

1) Contract employees have less education and lower family income, even in professional positions. On the average, they earn 10.6% less than standard full-time employees. (This is partly because employers "relax the standards" in order to hire less expensive staff.)

2) Contingent workers are also more likely to have job instability and to be much less satisfied with their employment arrangements than full-time regular employees.

3) Contingent workers (particularly employment agency temps) have a much higher risk of injury, mostly traceable to a lack of adequate safety training or equipment.

4) Lower pay, absent benefits, and frequent periods of unemployment mean that contingent workers have a much greater reliance on public assistance. Accounting for other factors that affect earnings, contingent workers earn less than standard workers on an hourly, weekly, and annual basis. GAO found that contingent workers earn about 10.6% less per hour than standard workers; 66% of contingent workers have no retirement plan; 50% have no medical benefits (except through public assistance.)

"But I'm a Permanent Employee… Why Does this Matter to Me?"

Cheap, unbenefited labor is a problem for ALL permanent employees because it presents a DIRECT threat to your job. Simply put, when part-timers and consultants are performing YOUR WORK, they depress the value of YOUR labor. This is because there are costs to real jobs far beyond the hourly rate: medical and retirement contributions and legal protections: unemployment insurance and workers' compensation, for instance. The use of temporary labor literally stresses the system for everyone. And, as the numbers swell, some of these systems, will either break OR cost far more to the remaining permanent employees.

Second, when employers' fail to fill regular full-time positions, the number of people in your bargaining unit diminishes. This means that the size (and influence) of your employees' association is eroded. Many local unions went through big drops in membership during the Recession, and have never recovered. At a certain point, if this continues, they lose their ability to function at all!

Impact on Service to the Public…

There are big reasons that public agencies are supposed to be very careful about whom they hire. People entrusted to perform "public service" are supposed to be 100% trustworthy and 100% capable. They are supposed to take tests to prove that they have expertise in the field and, after careful vetting, be hired from eligibility lists. The concept of the "merit system" was a reaction to a corrupt world, 100 years ago, where people could buy jobs with contributions and managers could hire family members. ***That couldn't happen with a private contractor today, could it?***

Permanent employees are ALL supposed to be ready to serve as first responders in the case of emergency. They are NEVER supposed to expose the agency to liability or behavior "unbecoming a representative of the County." They are subject to background checks and, often, carry weapons or licenses. In fact, the great difficulty involved in securing a government job was, in part, a recognition that *these jobs hold stature: they are supposed to be filled by serious, responsible citizens, for whom public service ("career service") is a lifelong effort*!

The truth is for most of the last three decades, public employees and their unions have been backed into a corner. If it wasn't one crisis, it was another. They have been downsized, privatized, maligned, and nickel-and-dimed to the point where many are holding down two jobs themselves. They have had little choice but to "look the other way" at all the forms of cheap labor in their workplaces.

Today, however, both the IRS and the Department of Labor are cracking down hard on common law labor.

Here's a Good Question…

Question: If I have information about domestic violence in a co-worker's private life, should I tell Human Resources about this?

This is a tough question. If your co-worker gave you this information requesting that you maintain her confidence, you may choose to do this and should not share the information. If your information is based on rumor, lacking direct evidence or information from the source, you should not share the information. But if you know for a fact that a co-worker is being, for instance, assaulted or stalked, for example, you should probably share this information, in order to protect everyone, including your workplace.

We know that about 1/3 of all workplace violence incidents are spillovers of domestic violence problems. But if your information is not definite, you might still be helpful by offering to be available to your co-worker if s/he needs to talk. And then listen. You could also suggest that s/he seek counseling or go to the Employee Assistance Program.

Flores v. City of San Gabriel:

Lawsuit Turns Cafeteria Benefits into Compensation

In June 2016, the Court of Appeals issued a ruling that may affect public employees' benefit cash out provisions, statewide. The case, brought by the Police Officers of the City of San Gabriel, argued that the dollars they were allowed to cash out from unused cafeteria plan benefits (when they opt out of the medical plan) should be considered as part of base pay. And the Court agreed. This means that the cash received by the employee through the cafeteria plan would be combined with their hourly wage. And *this* had further consequences: When the City pays the officers' overtime, that amount must be a one-and-a-half-time calculation *based on the new, combined hourly wage*.

In San Gabriel, the Flores decision had significant impact: Their cafeteria "out" amount was as high as $1,000 per month -- and the officers worked a LOT of overtime. In most other agencies the impact will be smaller, but it is still something for employers to worry about. If large numbers of employees have the right to cash out unused cafeteria benefits, the costs, when compounded by overtime, can be significant.

Just as many agencies were about to approach their unions to try to do away with cafeteria "cash-outs," the IRS came up with a solution: Employees may submit proof that they are receiving the "opt out" amount *only because* they have medical coverage from another source. If this is the case, then the cash-out amount does not need to be counted as compensation. The IRS requires that employees who receive money for "opting out" of their employer's plan must have *alternate* medical coverage from another source. But they may not use their compensation to *purchase* a plan on the government exchange. The money would not be considered sheltered from calculation as base pay if it is simply used to purchase a plan from California Care.

Employers Can't "Impair" Retiree Health Benefits

In this time of economic instability, local agencies are searching for ways to cut corners. So, not surprisingly, the high cost of retirement (particularly retiree h**ealth** benefits) always leap into the picture. If you have a retiree health benefit, only one thing STOPS your employer from cutting it: the law! The state of the law today is that if you have a union contract which includes post-retirement funding or monthly payments for a medical plan, your employer MUST continue to provide these after you retire.

In fact, not only must employers continue to provide agreed-upon benefits to people who have *already* retired, but they must continue to provide post- retirement benefits to any current employee who was promised these benefits *at any time during the course of his/her employment.*

Despite continued legal and political attacks, the state of the law remains constant: retirement benefits that are promised on the day that you're hired must be available on the day you retire. The Courts base these

decisions on the premise that **retirement benefits are part of a deferred compensation package.** They cannot be modified except by the substitution of benefits of equal value.

The courts have looked at two underlying principles for their decisions on this subject: first, the "inviolability of private contracts." What this means, simply, is that the Constitution upholds the concept that **contracts must be enforceable**. If a contract tells its employees when they retire they will have benefits, then the contract is binding.

This is because of the second principle: **retirement –related benefits are a form of deferred compensation**. If such benefits are the product of Contract Negotiations, they "vest" (becomes yours) at the time that your employment is accepted.

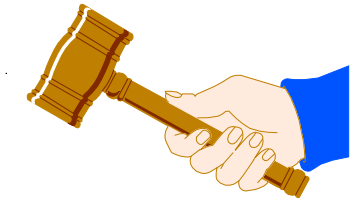
Future Contract Negotiations may alter benefits for future employees, but can't retroactively reduce retirement benefits for employees hired under *previous C*ontracts. Post-retirement benefits are "obligations of contract." In fact, even those benefits which may have been "bestowed" outside of contract bargaining, are deemed "protected" and considered "part of the contract" between public employers and their employees.

Retirees Have no Bargaining Power

The Courts have consistently upheld the concept of "vested benefits" because retirees do not have the capacity to bargain collectively. This protects older (or retired) employees against financial decisions that might be negotiated by newer generation of negotiators. Under the same principle, even employers' attempts to modify medical plans by increasing co-payments or drug costs have been thwarted by retirees' lawsuits. Their inability to bargain collectively, say the Courts, means that retirees "vested benefits" cannot be altered.

What about economic crisis?

In recent years, employers have argued that economic crisis should enable them to "break the promise" get out from under the "burden" of rising retiree health costs. However, unless there is an actual bankruptcy, the Courts have insisted that the retirees' benefits are truly "inviolable." To put it simply, "the mere existence of a fiscal crisis is not sufficient cause to justify the impairment of a contract. "



REAP Members Are Eligible for Free Legal Services

As part of our arrangement with our professional staff, members now have access to an attorney for all types of legal advice. If you are a current member, you may call our Attorney, John Stanton for assistance with any non-work legal problem. (Please call your union staff for work-related problems…)

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 forward & all conversations are confidential.

John has advised us that very often, people don't need to *retain* a lawyer; they just need simple advice and perhaps, a little help. If you do need formal representation, they will refer you to a reputable attorney in that field.

John is available at (714) 974-8941 or john@johnjstanton.com

Answers to Questions About Your Medical Plan

Q: When I started working here, the County provided FULLY paid health care for me and my family. It's one of the reasons I took this job. Now, the City is saying that we will begin paying over $100 a month toward our plan. The only way I can avoid this is by switching to an HMO. Do I have grounds for legal action?

A. If the City is simply "saying" this, without bargaining with your union, then, yes, you and all others similarly affected would have grounds for action. However, if the City negotiated properly and this loss is part of an overall agreement, then there is no violation. Almost all public employees used to have fully paid health care – and almost none of them do any longer. It is part of the political trend to make public employees "share" in their benefit costs – which started long before the recession.

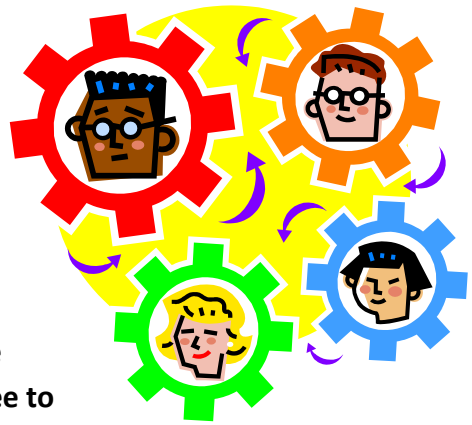
Q: Since I retired four years ago the City has been paying $350 toward my health care. Now they are saying that the retiree health care fund is running out of money and my contribution is being reduced to $100. Can they just do this?

A. Probably not. Retiree health care, and other retirement benefits, are considered forms of deferred compensation. You *earned* this benefit and the Courts have ruled that it generally can't be taken away. We say "probably" because the benefit depends on the language in the MOU in place when you were working. If it says that the amount can be reduced or depends on the solvency of some fund, then the amount CAN change.

Q: I've been told that the City is going to get out of Kaiser and go with a different HMO. I'm very attached to my doctor and have been undergoing some specialized treatment. Can they just DO this?

A. The City normally can't change your plan without bargaining. If the parties have negotiated the change, it's legitimate (and you should have been given an opportunity to vote on this.)

If there have been no negotiations, unless your MOU specifically names your health carrier, the City *might* be able to change plans as long as your health care *benefits* remain the same. Obviously, the benefits are NOT the same if you must change doctors! If you determine that this change was made without your union's agreement, you may have grounds for a significant grievance.



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 problem, feel free to talk to your Board Rep or contact professional staff at (562) 433-6983 or cea@cityemployees.net.

Question: Our Association is coming up for negotiations next year, and our Management has

already told us that they will be asking us to change to "at-will" status. Can you please tell me if there would be any impact and what this could involve?

Answer: An at-will employee serves at the behest of the County Board and can be terminated at any time without cause. At-will employees have no "Skelly Rights," no right to appeal discipline or an unjustified termination.

Public employees' right to "due process" in the face of termination is established by state law. Your employer can't change this without your agreement – AND YOUR UNION SHOULD NOT AGREE! Not only will members lose their most important job protection, but it could lead to an erosion of your bargaining unit and huge loss of bargaining power.

Finally, you should know that it's illegal for your employer to "condition negotiations on the waiver of a statutory right." This means, basically, that Management CANNOT tell you that you must give up your "Skelly Rights" in order to secure a contract or a raise, nor can they go to impasse to force you to give up these rights. If you need help with this call your Association legal staff. It can be a difficult subject.

Question: A man with a white mask and a black hoodie approached me at the customer service counter. He had his cell phone out and was recording. I was scared, and I went to my Department Head's office to ask for assistance. She was meeting with several other managers and they said they were aware of the guy. They told me to go back and ask what he wanted because he was harmless. I went back and NOT ONE OF THEM CAME WITH ME. The guy asked me if I was uncomfortable with the mask, and I said "Yes, I am definitely uncomfortable." He said he wanted information about sale permits, which I provided. Shortly after that, a Sheriff came, asked him some questions and he left.

I want to know whether I have the right to refuse to wait on this person (or anyone like this) unless the County provides me some help or security.

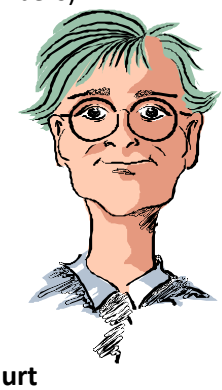
Answer: You always have the right to refuse to perform work that you think is unsafe. This situation certainly fits that profile. If you DO refuse to do something, it's important to have a witness to help explain why you, or members of the public, are in jeopardy. This is because you won't necessarily be protected against discipline for refusing a directive unless you can prove the situation is dangerous. So, before you REFUSE to do a task which you consider unsafe, you should report the situation and ask your supervisor to correct it. Hopefully, your management will assist you.

Your refusal to perform work may <u>not</u> be protected unless <u>all</u> of these guidelines are followed: 1) You must have asked the employer to eliminate the danger and they failed to do so, 2) You refuse *in good faith* (meaning that you genuinely believe that an imminent danger exists), 3) A reasonable person would agree that there is a real danger, and 4) There isn't enough time, due to the seriousness of the situation, to correct it through regular channels.

If management doesn't assist you, and you're directed to perform the work anyway, call an Association representative or Board member. If no rep is immediately available, call a co-worker who can serve as a witness and confirm your view of the situation.

Question: We have a member whose grandmother has fallen ill and needs to be moved to a nursing facility. The member will have to drive to Colorado to facilitate this. Can he legally use his sick time instead of vacation?

Answer: Sick Leave is a negotiated benefit, which applies only in limited circumstances: when you (or, sometimes, your immediate family members) are sick. In general, the Family Medical Leave Act (FMLA) doesn't apply to a grandmother unless your grandmother lives with you or your grandmother was recognized as your parent. HOWEVER, the new California "kin care" law DOES extend to coverage for grandparents. This means that an employee may use up to 1/2 of their annual sick leave accrual to help take care of a grandparent.



Question: One of our part-time employees hurt his back, pretty badly, moving tables and chairs onto the soccer field. They sent him to the County doctor, who told him to go back to work. This made his back much worse, so the next day, he went to his OWN doctor, at his own expense, who told him to stay off the job for several weeks. My question is: Doesn't the County need to pay him for his time to go to the

doctor appointments and lost days at work? Could the County be held responsible for making his injury even worse?

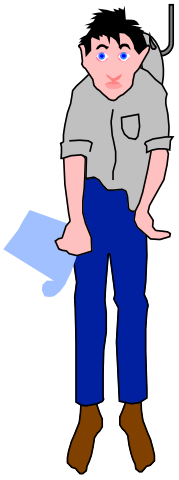
Answer: Yes and Yes! Workers compensation should provide pay (2/3rd of normal income) for his time off from work and for the medical appointments. All employees, even part-timers, qualify for this benefit. If this particular employee doesn't have a regular work schedule, *and the employer tries not to pay him for all the time lost*, he may need to call her union rep and/or a workers' compensation attorney.

He may need an attorney, anyway, because it sounds as if the County isn't properly recognizing, or taking care of, this employee's injury. He should call his union's professional staff for a referral. The attorney doesn't cost anything, but will ultimately take a percentage of his final settlement (if this is a serious, lasting injury.) If the employer KNEW about the injury and put him in a situation which made it worse, this is called "exacerbation." Under these circumstances he may be eligible for TREBLE damages (extra money,) which is ANOTHER reason he may need a lawyer.

Question: My boss is demanding an explanation for my request for time-off (four hours) for personal business. Am I required to submit an explanation? If so, how much personal information am I required to divulge?

Answer: Time off for "personal business" isn't the same as time off for illness. Unless your MOU says something explicit on this subject, you don't have the automatic right to request four hours' of paid time off. So, no, you are not required to share personal information -- but then your boss may deny your request. You might just share as much information as you are comfortable with. For example, you might just say "it's a family problem I need to deal with…" But if he asks more, you should be perfectly comfortable saying, "I'd rather not go into it."

Also, keep in mind that there are some situations where you have a legal right to the time off. For example, you have a right to attend your child's parent-teacher conference or to take time off to testify in court. Please contact CEA if you need help determining whether your personal reasons qualify for approved leave.



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 2008, 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.