Regional Employees Association of Professionals April 2017 News

SUPERVISOR OPT-OUT

In the current MOU between the County of Riverside and SEIU, employees in the Supervisory bargaining unit are permitted to opt-out of paying **ANY** dues, this includes Maintenance of Membership and Agency Fees. This was done as a way of preventing conflicts of interest between supervisors and subordinates, also represented by SEIU. Read Article 24 here. The opt-out process is quite simple. Download the opt-out letter, complete it and send, via certified mail, to SEIU 721 - 6177 River Crest Dr. Riverside, CA 92507. SEIU may state there are additional steps, but there is not. SEIU will employ the usual scare tactics – but opting out is your right under the MOU.

In 2013 when it appeared several non-supervisory employees were considering making Agency Fee only payments to SEIU, a side letter was drafted and signed off by the County. What this side letter did was prohibit employees from taking advantage of a caveat in the MOU which benefitted the employee. What resulted from this side letter was this; If an employee chooses to be an Agency Fee payer, the employee is required to pay FULL membership dues payments and SEIU will reimburse employees at a time of their choosing. The side letter does not specify when SEIU is required to reimburse the county employee. This is not acceptable!

REAP currently represents several supervisors and non-supervisory employees. Supervisors still need to know they have representation. Non-supervisory employees also like the fact that REAP utilizes attorneys with extensive knowledge of California labor laws. Although your co-worker may be well intentioned in saving your position and possibly your career, unfortunately, they do not possess the skills necessary to keep the unthinkable from becoming a reality! To become a member of REAP, download the 3 in 1 Authorization form and mail back to REAP via USPS.

Presently, REAP cannot negotiate any contract or any other type of employee benefit due to the rules contained in the Employee Relations Resolution (ERR). The ERR states there can only be one exclusive bargaining unit. Presently, this is SEIU, but that is also subject to change. Language in the ERR is slanted to favor the incumbent organization, as well as, the

county. REAP has challenged the ERR by filing a complaint with the Public Employees Relations Board (PERB) and we expect a ruling soon.

REAP is actively gathering signatures to remove SEIU as the exclusive bargaining unit. Help us, won't you? Download the petition for your bargaining unit from our web site and mail to REAP (address above), regular USPS mail will do. Get all of your SEIU represented employees to sign as well!

REAP's due are $10.00 per pay period, which is less than $12.00 per pay period SEIU currently deducts from your paycheck. REAP collects $20.00 from our members every 28 days. SEIU has a desire to increase ***your*** dues to a percent base format rather than the current flat rate we have all become accustomed to. However, in the new contract, it is highly likely that SEIU is going to bury a percent base dues increase which means **IF** you ever get a raise, SEIU also gets more dues money and they collect it ***before*** you collect your hard-earned money.

The time to take control of your future is now! The REAP Executive Board are also county employees that believe the best way to represent our members is through professionals. When negotiating contracts, we'll use professional negotiators. When providing representation, we use attorneys. Representing public employees shouldn't be about how much money can be raised for the next political theatre event, it should be focused solely on the employee. SEIU should know better…Shameful!

Follow REAP on Facebook at the *Regional Employees Association of Professionals*…

Looking towards the future…

The Minimum Wage is Going Up …
What Does This Mean to You?

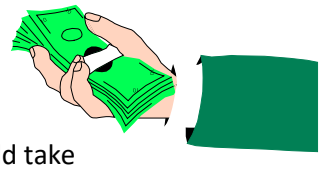
The minimum wage is going up! Last year, the State legislature passed a law which increases the minimum wage to $15 per hour by 2022. After that, increases will be based annually on the "Cost of Living." The first increase, to $10.50 per hour, took effect in January. Some cities have passed similar laws, increasing their minimum wages even higher than the state minimum.

In the public sector, unless you are an entry-level part-time employee, these increases probably won't impact you *directly*. But there ARE reasons they will affect your paycheck *indirectly*. For people negotiating new Contracts this year, you may already have seen this play out. The minimum wage is "lifting the floor" on wage increases. When salaries for entry-level employees' pay goes up by 5% (as the minimum wage did this year) it's only fair for ALL working people to request an equal increase.

Many bargaining units are pushing for higher raises this year -- often at agencies where they've barely seen a raise in 10 years. When the minimum wage goes up (i.e. when even the lowest-paid employees get a raise), it's hard for Management to offer NOTHING to permanent, long-term employees.

Further, increases in the minimum wage have been proven to increase the spending power of the poorest in our communities, thus injecting more money into local economies. Presumably, this will be reflected in YOUR agency's revenues, providing more discretionary money for employee compensation. To put it bluntly, minimum wage increases stimulate the economy – and this is good for almost *everyone.*

NOT ALL PAY INCREASES ARE MADE EQUAL…



Increases in the minimum wage raise questions about whether raises should take the form of **percentages** or actual **dollar amounts.** A 5% raise for a $10-per-hour employee is only $.50; a 5% raise for the $50-per-hour person is $2.50. **The more someone earns, the more a percentage-based raise benefits him.** And that benefit is exponential. "General" employees are acutely aware of the fact that they aren't receiving a fair share of their agency's resources, and focusing on specific dollar amounts to address those differentials is becoming more common.

Anyone who has ever spent time on a bargaining team quickly comes to understand that there are only two reasons employers will increase compensation significantly: recruitment and retention. Hiring good staff and KEEPING them. When the minimum wage goes up, the "labor market" becomes much more competitive. If a public agency pays poorly at the lower levels, they can't compete with other jobs in the economy. Further, most jobs at government agencies are not at all unskilled! They are specialized, requiring credentials or advanced degrees, more than the average private sector job. In fact, 58% of public employees hold Bachelor's or Master's degrees.

There are a limited number of these people. As the minimum wage rises, public agencies must not only compete with each other, but with private companies that pay just as well for less work and lower skill levels. Bottom line: as low-paid jobs rise in value, your employer will inevitably need to pay more to fill YOUR job, too.

As the expression goes, "a rising tide" really does "lift all boats." California's economy is back – and your Association should not be afraid to demand your fair share!

NEW COURT DECISION -
PUBLIC EMPLOYEES' TEXT MESSAGES ARE NOT PRIVATE!

The California Supreme Court has ruled that texts and emails sent by public officials on private accounts or devices are a matter of public record. This is considered a victory for advocates of "transparency" but raises important questions about what IS a "public official." It is entirely possible that this decision, combined with similar decisions in the area of law enforcement, could extend the notion of the "public's right to see" to ANY employee.

The unanimous ruling says the public may access communications about government business, *whether or not those communications were sent via a government account*. The Court held "that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act." The intent is to discourage public employees from using personal email for ANY work-related business. The decision leaves it up to individual agencies to establish their own policies for handling searches.

This decision stems from a case that arose in 2015 over the use of private email by San Jose city officials. An Associated Press survey found that many of California's top officials, including the Governor, Lt. Governor, and Attorney General, sometimes used private email to conduct business.

The ruling does NOT cover non-work-related communications. It specifies that the communications in question must "relate in some substantive way to the conduct of the public's business." The Court acknowledged that "[t]he public might be titillated to learn that not all agency workers enjoy the company of their colleagues, or hold them in high regard. However, an employee's electronic musings about a colleague's personal shortcomings will often fall far short of [this standard]."

WHAT IS PERB? (And What Does It Have To Do With Your Job?)

In 2001, the California legislature granted "local government employee organizations" the right to take cases before the Public Employment Relations Board (PERB). This was a revolutionary change for unions in cities, counties, and utility districts. For the first time, even the smallest association could get a fair hearing on its case without the difficulty or expense of going to court.

In the mid-1960s four different laws were passed, enabling ALL California public employees to form unions and enter into collective bargaining with their employers. PERB was established as the state "adjudicative body" over everyone *EXCEPT* city, county, and "special district" employees. This LAST group, "local government," was deliberately excluded from PERB's protection due to the active lobbying of the League of California Cities. The argument was that cities were their *own* independent governments, and, therefore, shouldn't be subject to control by the State. This argument was defeated in 2000 when then-Governor Pete Wilson needed union support and agreed to push for a law to bring cities and counties under PERB. Today, "local government" employees ARE covered by PERB and DO have the same right to legal recourse as all public employees in California, although they don't have the long history of decision making that applies to state, university, or school district employees.

What Does PERB DO?

PERB enforces the Meyers-Milias-Brown Act, which is our state bargaining law. The MMBA states that employees at local agencies can form unions, negotiate contracts, and ENFORCE those contracts if the employer tries to violate them. The law also states that the public agency will bargain *in good faith* and not retaliate against employees for their role in representing their union.

So if an agency does violate your Contract, or fails to bargain fairly or retaliates against someone for serving on a union Board (or even for filing a grievance) your union may go directly to PERB to rectify the problem.

PERB Hears Contract Violations

The most common case brought to PERB is a "unilateral change" claim. This means that the employer has "changed the rules," by violating your MOU, without bargaining. The normal "remedy" here is for the employer to restore the employees' rights or benefits which were lost. The violation could be almost anything: failing to pay overtime, standby pay, uniform allowances, or tuition reimbursement. Or it could be the sudden decision to implement a furlough, or change the holiday schedule, or put a "cap" on medical contributions. Even the failure to properly classify someone or failure to allow them to appeal a performance review could end up at PERB.

PERB also hears complaints about unfair bargaining. This could be the employer's implementation of "takeaways," its threats to "punish" a group doesn't accept the employer's offer, or imposing a new Contract without completing an Impasse Procedure. It could also be interfering with a member's right to serve on the bargaining committee or with the committee's right to communicate with the County Board.

The solution in this kind of case is for the parties go "back to the table" to continue to negotiate – this time "in good faith." This could also mean the

County must undo bad Contract terms that it has imposed and, *possibly*, give money back to employees.

What's the Actual Process?

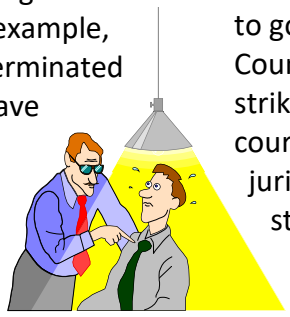
PERB has offices in San Francisco, Sacramento, and Glendale. Each location has in-house attorneys who evaluate your Association's claim and, if the violation alleges facts for a viable claim, PERB will issue a complaint and schedule an informal hearing. This is very much like a mediation session: the two sides come together, discuss the problem, and sometimes actually resolve it.

If the dispute isn't resolved, it is scheduled for a full hearing. That hearing may be set many months in the future, and is run very much like a court case, with witnesses, cross examination, and evidence. (Although PERB is free, *it is not fast.* When "local agencies" came under PERB's jurisdiction, this *quintupled* the number of agencies it oversaw. The staff has not increased to fill the need, so the process of completing a case that "goes to hearing" can take a long time…)

Only Unions Have "Standing"

In general Unions have "standing" at PERB; individuals DO NOT. If your rights under the MOU are violated, you may file a grievance as an individual, but your union must support you in order to bring the case to PERB. A contract violation may be characterized as a "failure to bargain" on the County's part – and **only unions have the right to bargain.**

The one exception to this lies with retaliation claims. If an individual suffers retaliation for union activity, s/he may bring the case forward independently. Union activity can take a lot of forms, ranging from serving on a bargaining team or to simply filing a grievance. Thus, for example, if a probationary employee is suddenly terminated the day after filing a grievance, he may have the basis for a retaliation claim at PERB, even though he has no right to a Skelly hearing under the law.



No Need to Exhaust the Grievance Procedure

There is no requirement that you or your union file a grievance (much less exhaust the procedure) before taking a complaint to PERB. HOWEVER, it's a good idea to have tried to solve the problem locally before filing at PERB. There are several reasons for this, including an obvious one: **the grievance process often WORKS** to get your employer's attention and resolve a problem. (This is particularly true if your employer knows that you will file at PERB if the dispute isn't resolved.)

Secondly, grievances are good for "fleshing out" the issues: allowing both sides to understand the other's perspective. Hearing officers want to know that the parties have at least *talked* about their dispute before filing legal papers.

On the other hand, some violations are so egregious (or the consequences of letting time pass so serious) that your union may want to go to PERB at the very first step. It's even possible to ask PERB for an injunction to stop Management's imminent actions if they could have *disastrous* effects on your members. (Keep in mind, though, that what PERB considers "disastrous" and what YOU think is disastrous may be very different. PERB *rarely* grants injunctions…)

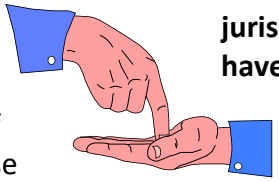
PERB is INSTEAD of Court

The hearing officers at PERB are lawyers, specifically called administrative law judges, because they specialize in public sector labor law. PERB has jurisdiction over all labor disputes in the public sector in California, except for police officers and a very small number of special agencies. That jurisdiction is occasionally tested, when one party or the other doesn't like a PERB decision and tries to go to court. This happened recently when a County tried to get the courts to stop an employee strike that a PERB judge refused to block. But the courts said, firmly, that PERB has "exclusive jurisdiction" over these matters, and would not stop the strike.

This doesn't mean, however, that PERB's

decisions can't be challenged. If an employer (or a union) believes that a decision made by PERB conflicts with state law, that entity can go to Court to try to overturn PERB's decisions. This happened often during the Schwarzenegger administration when conservative appointees to the PERB Board seemed to be overturning previous labor law precedents.

Speaking of Precedents



Because PERB has been making decisions since the mid- 60s, there are thousands of precedents on hundreds of subjects. These are all available on the PERB website, and you don't need to be a lawyer to understand them. For example, if you wanted to look up, "can the County change our Standby Pay policy without bargaining," or "can they install time clocks in our office," or "can they stop us from using the County's email," you will probably find a past decision.

During the recession, when many agencies believed that they had an *urgent* need to cut labor costs, PERB rendered lots of decisions informing employers that they couldn't implement furloughs, reduce benefits, shorten work hours, eliminate leave cash outs, fill jobs with part-timers, or a myriad of other "takeaways" without completing the bargaining process. In these circumstances, PERB was really the only agency insuring that public agencies complied with their employees' negotiated Contracts.

In the nearly two decades since PERB gained jurisdiction over smaller agencies, power relations have shifted dramatically. It's no longer the case that management can say "you don't have a grievance," and assume that a matter will be dismissed. Leaders of Associations now know that if their grievance is brushed off, they can take the grievance to PERB. They also know that the agency can be compelled to bargain fairly, can be forced to comply with external labor law, and can't retaliate against their leadership for their activism. If your Employer suddenly decides to change some aspect of your "wages, hours, or conditions of employment," it's good to know that your Association can go, affordably – and reasonably quickly – to a state agency to stop this loss.

MEET BRUCE YARWOOD: New Rep at the CEA Office

This month CEA welcomes a new field representative, Bruce Yarwood. Associate Yarwood and his wife (and two dogs) have moved here from Primm, Nevada, where he served as a union rep for many years. He will be available to all CEA clients in Southern California.

Bruce's career in the labor movement began in the 1980s. He earned his BS from the University of Lowell-Massachusetts, and worked for the Defense Department for twenty years. At the DOD, he rose to leadership in the Federal employees' union, achieved a Master's Degree in Organizational Management, and then went to law school. He earned his JD from Concord Law School and spent 15 years teaching labor-management relations at the university level. After this, he spent several MORE years, representing public employees for an international union near Las Vegas.

Bruce says he "worked almost my entire life for the rights of public employees for a fair and healthy workplace." He has conducted "many hundreds" of grievances and disciplinary appeals, including Labor Board hearings and arbitrations. He has unique expertise "working

collaboratively with management to build an environment of trust," and may also be taking on some difficult contract negotiations.

PERS Reduces Benefits to Retirees for First Time, Ever

At the end of 2016, CalPERS reduced benefits for members *who were already retired* – for the first time, ever. The retirees worked for the Sierra County City of Loyalton, which was in default on its PERS contributions.

Now, PERS is reducing benefits to the retirees of the now-defunct East San Gabriel Valley Human Services Consortium. This agency, which provided training as a joint powers authority in L.A. County, closed its doors in 2014 and ceased making PERS contributions in August, 2015. It currently owes CalPERS $406,345, and 197 current and future retirees may see their benefit reduced by as much as 63 percent.

These are not the first agencies to fail or cease to make payments, but CalPERS is making a point: if a participating agency does NOT make its pension contributions, its retirees will no longer receive their benefits. It's that simple…

News from Retired Public Employees Association

The Retired Public Employees' Association (RPEA) has been closely monitoring bills, both good and bad, which are significant to retirees and *future* retirees. Two bills are important to us:

- AB 1349 (Assembly member Tom Daly): This bill would establish legislation to establish a new source of funding for diabetes prevention programs and services.
- SB 17 (Senator Ed Hernandez): This bill would allow the legislature to pass a law requiring that purchasers of health care coverage be given advance notice of price increases in the costs of prescription drugs, including the justification, if any, for price increases.

At this time, SB 17 has been referred to the Committee on Rules and AB 1349 has yet to be heard in committee. RPEA will continue to monitor of these bills, going forward. At the same time, we have a great deal to consider as the Affordable Care Act fades and a new program evolves. Did you know that?

- Approximately 75% of the increase in Medicaid spending between 2013 and 2014 was because of an increase in the price of drugs.
- Of the 20 drugs with the highest cost increases in Medicaid, nine were generic drugs. The cost of these products increased again, from 140% to nearly 500% between 2014 and 2015.
- In 2016, a Kaiser Health Foundation tracking poll found that 77% of Americans say the costs of prescription drug costs are unreasonable. 86% favor action which would require drug companies to release information to the public on how their prices are set. 78% of Americans support limits on the amount drug companies can charge for high cost drugs for illnesses like cancer or hepatitis.

RPEA was founded in 1958 and has more than 24,000 members in California, Arizona, Nevada, New Mexico, and Oregon. We are the only statewide association representing all PERS retirees. RPEA works tirelessly to safeguard and promote the retiree benefits of California's public employees. For more information regarding retiree pensions and health benefits or to learn more about the Retired Public Employees' Association of California, check out our website www.rpea.com.

Standby Pay: What Does the Law Say? How Does It Work?

Most public agencies in California maintain a crew of skill workers who must "standby," at all hours, for emergencies. Citizens generally think of emergency personnel as fire fighters and police, but much less visible emergencies are conquered quietly, all night long: broken water mains, fallen tree limbs, power outages, etc. People who work during the day, but must be available nights, holidays and weekends, are considered "on standby." If they are required to answer a call or page, to be in work-ready condition, and to be dispatched wherever the employer sends them, *they must be paid.*

Standby time is considered work time under the law.

Although the Fair Labor Standards Act states that all work time must be paid no less than the federal minimum wage (which is $7.50 an hour) it also allows public agencies and their unions to negotiate local Standby Policies. Most policies pay employees a flat amount per day or week, but some are a percentage of base pay. The amount is negotiable, as are other aspects of the policy.

It is NOT legal for employers to compel staff to "standby" without pay.

The law states that you are in work status when the requirement to be available to your employer restricts your ability to live your everyday life, for example: how soon you have to answer or respond to a call and be on-site, whether you can drink alcohol, and when you are subject to discipline for violating any of these criteria. You don't have the right to Standby Pay if answering the phone is optional, if there is no discipline for failing to respond, or if you have the right to turn down a call out. (However, if you are NOT on standby, but DO answer a call, you CAN BE ordered to return to work!)

What is a "Call Out"?

Call out time begins when an employee must actually get in his vehicle, outside regular work hours, to attend to an employer's call. The law doesn't address the subject of "call outs" except to make clear that non-exempt employees who work more than 40 hours a week must be paid time-and-a-half for those hours. Many do have call-out policies, and they *usually* provide a minimum of two-hour' overtime (but, again, there is no *legal* requirement for this.) Unlike the regular work day, an employee "on call-out" is in paid status from the moment he begins the drive to the emergency. If he must drive to a location other than his normal workplace, he must also get mileage. (This is called "portal to portal pay" and it also includes workers compensation coverage.)

Employees who handle work problems on the phone or on a computer from home, but don't actually go out to a job, are not in "call-out" capacity. But they ARE in paid capacity, and the work must be counted as overtime if it goes beyond your normal 40-hour week.

What Parts Are Negotiable?

Standby duty can be mandatory. Unless controlled by negotiated policy, it is management's right to decide who will be assigned to a Standby Crew. (Although it's not within management's right to tell employees they must answer the phone to respond to emergencies if they are not being paid.) Many aspects of a standby policy are negotiable: the amount of pay, the length of response time, how employees will be selected or rotated into the crew, the length of the assignment, whether it can be "traded," etc. **Management can't change an agreed-upon policy without bargaining.**

Finally, standby and call-out pay aren't restricted to hourly employees. Supervisors and other "exempt" staff who respond to emergencies may request standby pay. If you are in a job class that has never been required to "standby," the employer cannot change this "term and condition of employment" without bargaining.

The Fair Labor Standards Act; How It Applies to Salaried Employees

An employee who is exempt under the FLSA is paid on a "salary basis" and is not eligible to receive overtime. Generally, he or she must be a professional or manager. He's not paid by the hour, but for the overall work accomplished. He must work autonomously, using independent judgement and discretion. An exempt employee must be paid his/her entire salary for any week in which work is performed, without regard to the quality or quantity.

But this does not mean that an exempt employee is at-will! Exempt employees at public agencies have the same "property right" to their jobs as any employee. In fact, because a short-term suspension could violate the FLSA's "salary test," it's difficult for employers to impose discipline greater than a letter of reprimand, but less than termination.

Exempt employees *can be* required to "clock in" and to use accrued leave for time off, but they can't be forced into unpaid status for partial days' absences, or into furloughs without benefit of negotiations. Further, if an exempt employee is furloughed, but then works more than 40 hours in a week, he can be considered no longer "exempt," and may gain the right to collect overtime pay.

The greatest complaint of most exempt employees is excessive hours of work, and they often negotiate for paid "admin leave" as a trade-off for overtime. **Exempt employees can also negotiate for other pay premiums**: standby pay, night/weekend differential, even comp time or overtime pay.

They also have the same right to union representation as any other employee. Agencies cannot forcibly change an hourly employee to "exempt" (or vice versa) without bargaining. Settlements have reached into the hundreds of thousands of dollars where a group of employees were re-designated as non-exempt without bargaining, and without meeting the "salary test" under the FLSA.

NEW BILL WOULD WEAKEN EMPLOYEE INFLUENCE OVER CALPERS' DECISIONS

A bill under consideration at the state level would greatly reduce the influence of CalPERS members over the Agency's Board of Directors. Introduced by Assemblyman Travis Allen (Republican-Huntington Beach) this bill would add two new seats to the PERS Board, and modify the qualifications for three of the existing seats, by limiting participation among Board members with connections to public employee unions.

The makeup of the CalPERS board was last modified by Constitutional amendment in 1992, by the voters. Of its 13 directors, six MUST BE chosen by employees who earn pension benefits directly. Two are appointed by the governor. Under Allen's bill, the governor would appoint two more directors, for a total of four. Thus, the balance of power would be changed to enable the governor to match or surpass the influence of public employees. A spokeswoman for Governor Brown has declined to comment on the new bill, citing his policy of refraining from weighing in on pending legislation.

The bill is not likely to pass, given the pro-employee composition of today's legislature. Nonetheless, it is a clear sign of several conservative "Taxpayers" organizations' efforts to force CalPERS into a more fiscally conservative position. Just a few months ago, that effort culminated in the Board's decision to lower CalPERS' investment assumptions. This raised most agencies rates. The state budget includes a higher PERS contribution rate, beginning this summer. For cities and counties, the rate increases won't take effect until 2018.

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

Question: The County's Personnel Rules have a section on "light duty" which is different from the Light Duty provision in our MOU. My question is: which one holds more weight, the MOU or the Personnel Rules? Also, since we are about to enter MOU negotiations, can we ask for a change in the Light Duty section, even though this is spelled out in the Personnel Rules.

Answer: Unless the MOU language is ambiguous, the MOU provision trumps the Personnel Rules to the extent the two are inconsistent. The Association may bargain over any provision – or any topic affecting wages, hours, or working conditions. This is true no matter WHERE the subject is written down, and even if nothing is written down at all.

Question: Our Department Director has created an interim position and promoted my co-worker to it, without advertising or conducting any exam. The job involves a 5% pay increase, and several of us would have been interested in this job. Do we have any recourse?

Answer: Rules concerning hiring criteria can be found in your agency's personnel policies, and they usually provide for interim "appointments." The typical provision allows the County to appoint an existing employee to perform some or all of the job duties of an existing position while recruitment is undertaken. This lasts until the position is filled on a permanent basis. If the position is brand new, your agency does need to notify your association of such and allow for bargaining over job specs and pay levels, and they should follow their local rules when it comes to posting a recruitment, interviewing, and hiring.

This means that you (or your union) have every right to ask how this person was selected and (more importantly) when the *permanent* position will be properly filled, from a list, based on a test. If the County intends that the position be filled on this "interim basis" for more than a few months, you may want to consider a group grievance.

Question: The County has notified us that several of our members are eligible to change from non-exempt to exempt status. At least one person doesn't want to make the change (because he will lose overtime money) but we are being told this is controlled by federal law. Can our member refuse to go exempt? Does our association have any role here?

Answer: "Exempt" employees are salaried employees and can work any number of hours without overtime. The definition of exempt employee is established by federal law (the Fair Labor Standards Act) and, although standards have varied from administration to administration, the definition of "exempt" is still fairly narrow: managers, administrators who have autonomous

decision-making, and highly specialized professionals.

Agencies often designate employees "exempt," incorrectly. *This saves the employer money*. Further, even if an employee WOULD BE properly designated "exempt," **management cannot do this without bargaining.** So, the union DOES have a role, particularly if your members object to the change, and would experience a loss.

The law does not REQUIRE that all potentially exempt employees to be designated so. It simply allows this. They may also remain eligible for overtime.

Question: One of our members has cancer and has used up all of her leave time. My co-workers and I would like to contribute some of our accrued leave to a Leave Bank for her. Can we do this?

Answer: Some Associations have negotiated a program called a "Catastrophic Leave Bank" or "Leave Donation Program." This means that the County will facilitate employees' putting aside some of their leave for a sick or injured co-worker. The rules for doing this are part of the negotiations. Management does usually want to make sure that the recipient of the donations has used up his/her own leave first.

If there is no Leave Donation program at your agency, you (and your Board) can try to start one. Most employers are cooperative with these kinds of efforts. You DON'T need to wait until contract bargaining time.

Neutral Hearing Boards Can't Be Guided by Employer-side Attorneys

Employees threatened with major discipline have the absolute right to "Skelly Due Process." This is a two-part hearing process: first an informal meeting with Department Management to allow you to respond to the charges; and second, a "full evidentiary hearing before a reasonably impartial non-involved reviewer." In many public agencies, this "reviewer" is a Personnel Board or Civil Service Commission. On the surface, this is good. All too often in the past, however, this neutral hearing Board was advised, legally, by the same attorney who served as the advocate for the County. In other words, the "neutral" hearing board was receiving its advice about how to conduct the hearing by the same person who was assigned to WIN that hearing.

A few years ago, the Fourth District Court of Appeals issued a ruling that rendered this obvious conflict of interest illegal. The case involved the termination of a non-sworn Police employee in the City of Santa Ana. The lawyer who advised the Personnel Board about its role also served as the prosecuting attorney for the City. When the Personnel Board upheld the City's termination, the employee's Union sued. It argued that the "neutral" legal advisor to the Board could not possibly have been neutral. The Court agreed, and ordered the employee to be provided a new hearing. The Court found that although the hearing might well have been fair and impartial, "the dual roles" played by the City's lawyer "lead to a clear appearance of bias on the administrative level." Even though the employee might have been guilty of a severe infraction, "this perception alone" was sufficient to overturn the termination…

This decision is significant, especially for small jurisdictions that rely on legal advice from a single attorney. It is NOT acceptable for the employer's advocate also to serve as its neutral "advisor."