Glendale City Employees Association April 2020 News

Contract Bargaining Update

Last month, your Association Board confronted the immediate impact of Covid-19. Just as this virus disrupted almost all aspects of life, it also slowed the pace of our MOU negotiations. But we are determined not to let this temporary obstacle slow down our progress. We are proposing dates to begin meeting with management this month. Challenging as these times may be, we all have a job to do. Your Association is keeping its eye on the ball to improve your pay, benefits and working conditions.

At our first meeting with management, we typically will do introductions, discuss ground rules, and set future dates. But with the delay in getting started last month, we will likely jump right into substantive negotiations. Once we submit our proposals, we will provide a general summary in our updates. In the meantime, feel free to contact any team member for more detailed information. *Thanks for your support!*

TABLE OF CONTENTS

COVID-19: Public Servants Respond in Times of Crisis

These are surreal times! Last month, as the spread of the Coronavirus and the efforts to contain it in the United States brought the nation to a halt, California's dedicated public servants once again rose into the spotlight. But this time, for the better, as many residents came to more fully understand and appreciate the essential nature of public service in a time of crisis. The rallying cry of "reformers" in the wake of the Financial Crisis of 2008 was all about public employee compensation, pensions, or unfunded liabilities. That narrative framed the context for the last 12 years as a debate between management and labor over a limited supply of the public's financial resources, a zero-sum game of conflict and hard bargaining during a time of fiscal austerity. Everyone had to do more with less, we were told. The COVID-19 crisis – and likely the new age that it will usher in – seems very different. Like September 11, 2001, this crisis shines the spotlight on what labor and management can accomplish when everyone works together towards a common goal of providing essential public services in times of emergency.

State of Emergency: On March 4, Governor Newsom declared a state of emergency to make additional resources available and prepare emergency actions for public agencies to respond to the spread of the virus. Many local agencies followed with similar declarations. On March 11, the World Health Organization declared Coronavirus a global pandemic due to significant spread in multiple countries around the world. On March 13, the President declared a national emergency, freeing up billions of federal funds and directing the Federal Emergency Management Agency to act. On March 19, Governor Newsom issued a state-wide shelter in place order. Congress then passed the Families First Coronavirus Response Act, followed by the largest economic stimulus package in our nation's history. The pandemic is certainly a force to be reckoned with.

Disaster Service Worker: Public servants across the state are responding. Under Government Code §3100, all California public employees are considered "Disaster Service Workers." Enacted in 1943, and more recently amended in 1972, the law specifically says:

> It is hereby declared that the protection of the health and safety and preservation of the lives and property of the people of the state from the effects of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life,

> property, and resources is of paramount state importance requiring the responsible efforts of public and private agencies and individual citizens. In furtherance of the exercise of the police power of the state in protection of its citizens and resources, all public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law.

This means that public employees may be called upon to serve the needs of the public in the event of an emergency, like that presented by the novel Coronavirus (COVID-19), even before you serve the needs of yourself or your family. It means that management can direct you to report to work and to perform duties outside your regular job classification. If you are at work, you can be compelled to stay at work until you are released. If you are at home, you can be compelled to come into work, if it is safe for you to do so.

Responding to Crisis: What are your responsibilities in the case of a disaster? Only firefighters and police officers are considered "front-line" or first responders. You are not required to put yourself in physical danger. Labor Code §6311 protects you from discipline if you refuse to perform work that is a "real and apparent hazard" to yourself or others. Otherwise, you are required to do whatever work you are told to do. Public agencies must have a Disaster Preparedness Plan. Under the Plan, specific individuals are assigned to carry out specific duties, in accordance with their training. If you have not been directly involved in the training exercises, your job class may not involve work that is considered essential during a disaster. But you may still be called upon to serve as a Disaster Service Worker. All public employees can be asked to serve in a crisis.

Partial Work Closures: Can the Agency mandate partial work closures? In theory, yes. Many MOUs include management rights or force majeure clauses that allow the agency to suspend or modify certain protections in your MOU in the event of an emergency – but only for the duration of the emergency. The current crisis concerning COVID-19 certainly qualifies. Partial work closures, or reducing hours, are often implemented to save the agency money, but in the current crisis, it is designed to contain the spread of the virus and keep the workforce safe. Regardless, it is a change in terms and conditions of employment. Therefore, management must first extend an offer to meet and confer to your employee organization to negotiate any impacts, even in times of crisis, unless a specific MOU provision gives them the authority to act unilaterally.

But most agencies are not implementing unpaid furloughs in response to the COVID-19 outbreak. Instead, most agencies are directing as many employees as possible to work from home. Also, in many instances, agencies are providing separate paid administrative leave for employees who are not eligible for telecommuting, and who are not sick, but are nonetheless directed not to report to work. This approach helps contain the spread of the virus while mitigating any economic effect on employees' pay and benefits. Your employee organization has the right to negotiate with the agency over partial work closures. For those who are directed not to report to work, one option is for paid leave as noted above. But certain essential services must be maintained. Negotiations can help clarify who must report to work, who must remain on-call, and what services shall be prioritized. It can also include discussions over who can work remotely, and what safety precautions must be provided to those who are put in harm's way.

Partial work closures are a good way to manage the current stage of the crisis. This includes those who have contracted the virus, those who need to care for someone who has the virus, those who are quarantined, who are prevented from returning to the country due to travel bans, or who need to stay at home to care for children who are at home due to school closures. Most people are trying to make the best of the time off, all things considered. Both management and labor are for the most part viewing partial work closures as a "win-win" in the current outbreak.

Overtime: Keep in mind that salaried employees are considered "hourly" when furloughed. This means salaried employees who ordinarily are not eligible for overtime may be eligible if they work over 40 hours during the workweek, although this is only for the pay period in which a partial week's loss of pay – *i.e.* the furlough – occurs. This only applies if the salaried employee is on an unpaid furlough. The agency can provide paid leave days, or deduct paid leave from the employee's leave accounts, without causing the salaried employee to become hourly. Also, to avoid jeopardizing the employee's exempt status permanently, the agency must restore affected employees to full work schedules and salaries "as soon as business conditions permit." There is no set rule on how long or how to know when this change in conditions had occurred.

Conclusion: Given the wave of school closings, the shutdown of sports and entertainment events nationwide, the shelter in place order, and the strain on our

healthcare system, most public employees are embracing the call to work with management to find a solution that works for everyone. In many ways, the crisis has brought out the best of both labor and management. Both sides are coming together in short order to cooperate and resolve impacts and to provide much-needed certainty to employees and their families, all while ensuring that the agency's mission is accomplished. It is the apex of public servants rising to the occasion when placed in a position of public trust in times of crisis.

This sacrifice will not go unnoticed by management and elected officials. Helping to contain the spread of the virus – and to prevent hospitals and medical professionals from being overwhelmed and supplies exhausted – is literally saving lives. Not just for those who contract the virus, but also for anyone who experiences a medical emergency that requires immediate treatment. Even for employees who work remotely or are home during partial closures, public employees everywhere are doing their part. Hopefully, this renewed sense of shared responsibility and interests continue in the days, weeks and months ahead. If so, it may help bring an end to the zero-sum conflicts of years past and usher in a new era of "win-win" bargaining where both labor and management's interests can be achieved. Considering the previous decade, in which public employees were often made the scapegoat for fiscal belt-tightening, a new era where public employees are finally fully recognized and appreciated for their role as public servants is long past due.

News Release - CPI Increases!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation. Here's a look at this month's figures:

2.3% - CPI for All Urban Consumers (CPI-U) Nationally

3.1% - CPI-U for the West Region

3.4% - CPI-U for the Los Angeles Area

3.0% - CPI-U for the Riverside Area (from January)

2.3% - CPI-U for San Diego Area (from January)

2.9% - CPI-U for San Francisco Bay Area

These numbers are important! Although they're only a rough measure of inflation, elected officials and agency management do often look to these figures as a benchmark for determining an appropriate "Cost of Living" raise.

New California Law Bans "No-Rehire" Provisions in Settlement Agreements

It is common practice for public agencies to include "No-Rehire" clauses in settlement agreements when separating an employee's employment. These clauses essentially say that the employee can never work for the agency ever again. It is a condition the agency requests an employee to agree to when resolving any employment dispute involving termination. But a new California law now prohibits employers from including these clauses in settlement agreements. Assembly Bill 749, signed into law by the Governor last year, says that all "no-rehire" provisions in employment settlement agreements entered on or after January 1, 2020, in California are void as a matter of law. This law is another #MeToo-inspired bill from last year following the wave of legislation in 2018 over prohibited harassment in the workplace.

The initial effect of AB 749 is that employers will remove these clauses from settlement agreements going forward. If an employer does include one, it will not be enforceable. Although there's no enforceable ban on re-hire, it does not necessarily mean that the agency is legally obligated to bring the former employee back. They just can't use the "no-rehire" clause in the settlement agreement as the basis for any refusal to re-hire.

But the hope is that AB 749 has a longer-term impact on HR practices that are positive for employees overall. For example, prospective employers often ask an applicant's former employer whether the applicant is "eligible for re-hire." In many ways, it's seen as an end-run around a non-disclosure or confidentiality clause in settlement agreements. Ideally, AB 749 would end this practice. It should also end the practice of HR checking a box in their systems indicating that a former employee is "not eligible for

rehire." This should make it more likely that any applicant will be evaluated at that time based on their qualifications and not on any former work history with the employer.

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: Management has asked me to take a loyalty oath. They say it's a requirement, citing a law mandating the oath from 1968. It's titled, "Oath or Affirmation of Allegiance for Public Officers and Employees." I must sign the form and it also must be signed by the person administering the oath. I must "solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter." I feel this violates my religious beliefs. I only bear true faith to god, not to any public document. I can't in good conscience take this oath. Do I have to take it? What are my options?

Answer: Management should modify this type of oath for anyone with a bona fide religious objection to swearing allegiance or "bearing true faith." But the key issue is often what qualifies as a bona fide religious objection. It is likely not enough for an employee to simply personally feel the oath is objectionable. Management may require you to verify that you are an active member of a religious group that objects to these types of oaths. If you believe you qualify, first request the modification. If management refuses, get HR involved. In most circumstances, HR will accommodate without the need to file a grievance.

Question: Can Management stop sick employees from coming to work when they are sick? If not, why not? Every year, during cold and flu season, employees come to work sick and they pass on viruses to others. The whole point of paid sick leave is to stay home when you're sick. This is not just for the sick employee's benefit, but also everyone else that employee would encounter during the workday. Yet, every year, without fail, management refuses to send sick people home and

everyone else ends up getting sick as a result. This year it's even worse with the coronavirus. Is there something I can do to enforce my right to a safe workplace?

Answer: A great question that is most relevant right now. Yes, management can send employees home if they are sick. Management is obligated to provide a safe workplace, and if someone is obviously infectious then the person may be sent home. Management may also require verification from the employee that it is safe for them to work if the employee denies being sick. It is less certain whether Management must provide paid administrative leave during the time period when an employee is verifying his/her ability to work. However, if someone is showing signs of obvious infection, it is tough to argue that the employee shouldn't be required to use accrued sick leave time, which your Association negotiates for times like these. But to your question, yes, you can enforce your right to a safe workplace relatively free from the risk of infection. Start by communicating your concern to your supervisor or Human Resources. You can file a grievance, if necessary.

Question: Management sent a notice that the Federal Motor Carrier Safety Administration is establishing a Commercial Driver's License Drug and Alcohol "Clearinghouse" database that will contain information about violations of the Department of Transportation drug and alcohol testing program for holders of CDLs. Management is requiring that I register with the Clearinghouse. The data will be available not just to my Agency but to any other employer who is in the system. They say it's to prevent an employee from getting a violation with one employer and then refusing to disclose it to another employer. Records are kept for five years or until the driver completes the return to duty process, whichever is later. Management is also requiring that I sign a consent form that authorizes them to query the Clearinghouse to see if there's anything about me in their database. If I don't sign, they will prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, which is a basic job duty for my position. Can they do this? It seems like a blatant violation of my privacy. What are my options?

Answer: Management is obligated to meet and confer over changes to terms and conditions of employment. Even if management is simply complying with a law, the Association must still receive notice and an opportunity to negotiate over the impact any change has on the person's job. This new tracking system

arguably triggers management's obligation to meet with your Association and negotiate. Impact negotiations, in this case, would likely include what consent members must provide, how the information may be used, etc. However, if there is a legal requirement per DOT, you will need to comply in the end if you perform safety-sensitive functions. It is your Association's role to addresses all your concerns through negotiations when a new policy is proposed, even if it comes from the state or federal level.

Question: I had a workplace injury and received workers compensation benefits. I was declared permanent and stationary and have been released back to work. But I still have regular doctor's appointments that I must attend regarding the injury. Human Resources recently informed me that I must now use my own sick time to go to workers compensation appointments that are scheduled during the workday. Is that legal? I thought they had to grant leave to attend these meetings. Why are they saying I need to use my sick leave? I had heard other employees could attend workers comp appointments without having to use their leave. I don't think this is fair. Can I grieve this? What are the parameters for when I must use my own time and when I can go on Agency time?

Answer: This comes up often and you will probably not like the answer. Unless there is a local Agency policy or an MOU provision negotiated by your Association, your employer may require you to use your own sick time for Doctor's visits and rehabilitation. There is nothing in Worker's Comp law requiring your employer to pay for the time you attend doctor's visits. That said, many employers do allow employees to go on Agency time, and in some cases, there may even be an enforceable past practice or a written policy. This may be the case if the Agency has allowed other employees to use Agency time. If so, you may be able to grieve having to use your own time as a violation of past practice or disparate treatment (applying a policy different for you, than others). But first, try scheduling your appointments during times when you minimize disruption to operations (often at the end or beginning of a shift). Your Department may be more willing to work it out and you just might save yourself the hassle of needing to get HR involved or file a grievance.

Question: My position is a Grade III Operator and immediately above me is the supervisor. Management has the Grade III's lumped in with the supervisors for purposes of the Stand-By assignment rotation. The grade I's and II's are together in a separate

Stand-By assignment rotation. Isn't this something I should be receiving out of class pay for? They have us with the supervisors on the rotation because we're asked to do higher-level emergency response. I think if we're asked to perform with supervisor level responsibility, we should be getting supervisor level pay. Can I grieve this? How do I go about ensuring I get the proper pay? I'm ok if they want to put us into the rotation with the grade I's and II's, it will mean we're on Stand-by less frequently and frankly we don't get paid enough on Stand-by to make it worth it, in my opinion.

Answer: On first blush, this sounds more like an issue for MOU negotiations then a grievance enforcement issue (out of class or otherwise). Out of classification grievances are often straightforward: Management assigns you work that properly belongs to a higher paid classification (evidenced by the duty listed in the job specification for that position). Here, it is not clear whether Management is assigning work consistent with a Grade III, or if it is truly Supervisory work. But if the Supervisor job spec clearly lays out the "higher-level emergency response" and this language is not in the Grade III job spec, then you may be able to address it as an out of class grievance. Furthermore, if a policy exists laying out the Stand-By assignment rotation, you could grieve if your position should be in the same rotation with the Grade Is and IIs. If no policy exists, then your Association can negotiate one that lays out the rotation procedure. Beyond that, it seems like the real issue is pay, which is often the solution to resolving these types of issues concerning standby assignments. With higher pay, more employees are willing to volunteer for rotation.

Workers Compensation TTD Rates Have Increased!

If you are injured on the job, and you need to go on workers compensation leave, state law provides for a benefit known as TTD – Temporary Total Disability. TTD is a benefit designed to compensate you while you are unable to work and are under active medical treatment due to an industrial injury. The amount and duration vary, depending on your date of injury and your pre-injury earnings.

According to the Division of Workers' Compensation, minimum and maximum TTD rates for 2020 work injury claims increased on January 1 as a result of the rise in California's State Average Weekly Wage. The average weekly wage rose from $1,276 to $1,325 in the 12 months ending March 31, 2019. The TTD benefit is two-thirds of a worker's

salary, with a minimum and a maximum amount. As of January 1, the minimum TTD benefit is $194.91 a week; the maximum is $1,299.43. In addition to TTD rates, other Workers' Compensation benefits have also increased, such as life pensions and permanent total disability benefits for workers injured on or after January 1, 2003.

It can get complicated, which is why you should have an experienced workers compensation attorney on your side! To learn more about your legal options, call your professional staff, who can refer you to a reputable attorney in this field.