

No. S192828

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF LOS ANGELES,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

ENGINEERS AND ARCHITECTS ASSOCIATION,

Petitioner and Real Party in Interest

Court of Appeal of the State of California
Second Appellate District, Division 3
Case No. B228732

Appeal from Superior Court of Los Angeles
Honorable Gregory Alarcon
Civil Case No. BS126192

MOTION TO TAKE JUDICIAL NOTICE

Gary M. Messing, No. 075363
Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
Gonzalo C. Martinez, No. 231724
**CARROLL, BURDICK
& McDONOUGH LLP**
44 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone: 415.989.5900
Fax: 415.989.0932
Email: gadam@cbmlaw.com

Adam N. Stern, No. 134009
THE MYERS LAW GROUP
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (213) 223-7617
Email: laboradam@aol.com

SUPREME COURT
FILED

SEP 26 2011

Frederick K. Grinnon Clerk

Deputy

Attorneys for Petitioner and Real Party in Interest Engineers and Architects Association

No. S192828

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF LOS ANGELES,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

ENGINEERS AND ARCHITECTS ASSOCIATION,

Petitioner and Real Party in Interest

Court of Appeal of the State of California

Second Appellate District, Division 3

Case No. B228732

Appeal from Superior Court of Los Angeles

Honorable Gregory Alarcon

Civil Case No. BS126192

MOTION TO TAKE JUDICIAL NOTICE

Gary M. Messing, No. 075363
Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
Gonzalo C. Martinez, No. 231724
**CARROLL, BURDICK
& McDONOUGH LLP**
44 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone: 415.989.5900
Fax: 415.989.0932
Email: gadam@cbmlaw.com

Adam N. Stern, No. 134009
THE MYERS LAW GROUP
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (213) 223-7617
Email: laboradam@aol.com

Attorneys for Petitioner and Real Party in Interest Engineers and Architects Association

I

MOTION TO TAKE JUDICIAL NOTICE

In support of Petitioner and Real Party in Interest Engineers & Architects Association's ("EAA") Opening Brief on the Merits, and pursuant to Rules of Court 8.252, subd. (a) and 8.520, subd. (g), EAA asks the Court to take judicial notice of:

1. Los Angeles City Charter, art. I, section 101; art. II, section 219; and art. III, sections 310-315, attached hereto as Exhibit 1.
2. Los Angeles Administrative Code, ch. 8, sections 4.800, *et seq.* (Employee Relations Ordinance), attached hereto as Exhibit 2.
3. Decision and Order of Los Angeles Employee Relations Board in Unfair Employee Relations Practice Claim No. 1768, Decision No. U-214, dated April 25, 2011, attached hereto as Exhibit 3.

II

THE COURT MAY TAKE JUDICIAL NOTICE OF THE LOS ANGELES CITY CHARTER, ITS ADMINISTRATIVE CODE, AND DECISIONS BY THE LOS ANGELES EMPLOYEE RELATIONS BOARD

The Los Angeles city charter and its administrative code are properly the subject of judicial notice. (Evidence Code sections 452, subd. (b) and 459; *Scott v. Common Council* (1996) 44 Cal.App.4th 684, 686 n.1 [judicial notice of city charter]; *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 647 n.13 [judicial notice of administrative code].)

The decisions and orders of an administrative board, such as the Los Angeles Employee Relations Board, are also properly subject to judicial notice. (Evidence Code sections 452, subd. (c); *California Dept. of Corrections v. State Personnel Bd.* (2004) 121 Cal.App.4th 1601, 1605 n.1 [judicial notice of decisions by state personnel board]; *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 247 n.20 [judicial notice of decisions by various Los Angeles city boards].)

Judicial notice here is “compulsory” because the City of Los Angeles has sufficient notice “to enable [it] to prepare to meet the request.” (See Evidence Code section 453.) Relatedly, the City of Los Angeles sought and obtained judicial notice of the Hearing Officer’s Supplemental Report from the court of appeal (see Court of Appeal Case No. B228732, Docket Entry dated February 4, 2011), which Report was formally adopted and rejected in part by the Decision and Order of Los Angeles Employee Relations Board attached as Exhibit 3.

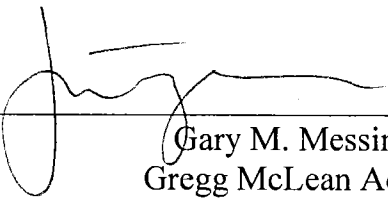
III

CONCLUSION

For the foregoing reasons, EAA respectfully asks this Court to judicially notice the attached document.

Dated: September 26, 2011

CARROLL, BURDICK & McDONOUGH LLP

By  _____
Gary M. Messing
Gregg McLean Adam
Jonathan Yank
Gonzalo C. Martinez

THE MYERS LAW GROUP

Adam N. Stern

Attorneys for Petitioner and Real Party in Interest
Engineers and Architects Association

EXHIBIT 1

ARTICLE I INCORPORATION AND POWERS

Section

- 100 Incorporation.
- 101 Powers of the City.
- 102 Relationship to Other Governmental Entities.
- 103 Delivery of Services.
- 104 Restrictions on the Powers of the City.
- 105 Title to Property.
- 106 Definitions.
- 107 Effect of Invalidity in Part.

Transition Provisions

- 108 Intent of Voters.
- 109 Adoption Date; Operative Date.
- 110 Effect of Enactment on Existing Law and Offices.
- 111 Obligations of Contract Not Impaired.
- 112 Previous Charter Sections Treated as Ordinance.
- 113 Effect on Pension and Retirement Benefits.
- 114 Changes in City Offices.
- 115 Changes in City Departments.
- 116 Status of Incumbent Officers and Employees.
- 117 Changes in Civil Service Discipline Provisions.
- 118 Actions to Be Taken Prior to Operative Date.
- 119 Repeal of Former Charter.

- 120 Increase in Council Size.
- 121 Effect of New Charter on Board of Education.
- 122 Elimination of Transition Provisions.

Sec. 100. Incorporation.

The City of Los Angeles shall continue to be a municipal corporation under the same name and possessed of all the property and interests of which it was possessed at the time the Charter takes effect. The boundaries of the City shall be the boundaries as established at the time the Charter takes effect, or as may later be changed in the manner authorized by law.

Sec. 101. Powers of the City.

The City of Los Angeles shall have all powers possible for a charter City to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in the Charter, subject only to the limitations contained in the Charter.

Sec. 102. Relationship to Other Governmental Entities.

(a) The City may, by ordinance, transfer or consolidate functions of the City government to or with appropriate functions of the state or county government or other governmental entities, or make use of functions of the state or county government or other governmental entities. The Charter provisions providing for the function of the City government transferred or consolidated may, by ordinance, be suspended during the continuation of the transfer or consolidation. Any transfer or consolidation may be repealed by ordinance, which repeal will terminate the suspension of the Charter provisions providing for the transferred or consolidated functions. Nothing in this section shall be construed as affecting transfers or consolidations approved prior to the operative date of the Charter.

(b) The City may exercise any of its powers or perform any of its functions and may participate in the financing of its efforts, jointly or in cooperation, by contract or otherwise, with one or more other cities, states, or other governmental bodies, the United States or any of its agencies.

Sec. 103. Delivery of Services.

Every City office and department, and every City official and employee, is expected to perform their functions with diligence and dedication on behalf of the people of the City of Los Angeles. In the delivery of City services and in the performance of its tasks, the government shall endeavor to perform at the highest levels of achievement, including efficiency, accessibility, accountability, quality, use of technologically advanced methods, and responsiveness to public concerns within budgetary limitations. Every analysis and review of the performance of the government and its officers shall seek to ascertain whether these high standards are being met, and if not, shall recommend methods of improvement.

Sec. 104. Restrictions on the Powers of the City.

The rights and powers granted by the Charter shall be subject to the restrictions set forth in this section or elsewhere in the Charter.

(a) **Mortgaging of Property.** The City shall have no power to mortgage its property for any

ARTICLE II OFFICERS OF THE CITY

Section

General Provisions Related to Officers

- 200 City Officers.
- 201 City Offices.
- 202 Election of Officers at Large.
- 203 Appointment and Removal of Officers.
- 204 Election of City Council Members; Redistricting.
- 205 Term of Office.
- 206 Term Limits.
- 207 Vacancy in City Offices.
- 208 Determination of Incapacity.
- 209 Code of Conduct of Elected Officials; Censure
- 210 Acting Incumbency in City Offices.
- 211 Suspension Pending Trial.
- 212 Prohibition on Council Member Serving in Other Capacity.
- 213 Additional Powers and Duties of Officers and Employees.
- 214 Creation of Additional Departments and Officers.
- 215 Oath of Office.
- 216 Annual Report.
- 217 Investigations and Proceedings.
- 218 Compensation of Elected Officers and Limitation on Outside Activities.
- 219 Salary Setting.

Municipal Court judges.

(b) **Restrictions on Outside Activities.** The Mayor, City Attorney, Controller, and members of the Council shall devote their entire time to duties related to their offices. They shall not receive any compensation, including honoraria, for their services other than that provided in this section, except that which may be provided for their serving on governmental entities where payment is authorized for other governmental officers or employees serving in that capacity.

Sec. 219. Salary Setting.

The Council shall set salaries for all officers and employees of the City, including those officers and employees provided for in departments having control of their own definite revenues and funds, except for salaries specifically set or otherwise provided for by the Charter. Salaries shall be set by ordinance, unless otherwise set through collective bargaining agreements approved by the Council and entered into in accordance with the provisions of state law. Collective bargaining shall be conducted in accordance with procedures established by ordinance; provided, however, the ordinance shall provide an opportunity for the Mayor to participate in a committee established to give advice and instructions with respect to the City's bargaining position in the meet and confer process. This committee shall also advise with respect to salaries set by ordinance.

Sec. 220. Restrictions on Compensation of Officers.

No officer of the City shall be compensated by fees or commissions. No officer of the City shall retain any fee, recompense or compensation received by him or her for the discharge of any duty of office from any person other than the City, but shall immediately pay over to the Treasurer all money received.

Sec. 221. Surety Bonds.

The Council shall by ordinance fix the amounts and terms of the official bonds of all officers and employees of the City who are required by the Charter or by ordinance to give a bond. These bonds shall be approved by the City Attorney as to form, and shall be filed with and remain in the keeping of the Office of the City Clerk. The City shall pay the premium on any official bond required by the Charter or ordinance.

Sec. 222. Conflicts of Interest; Board of Referred Powers.

(a) **City Attorney Opinion.** Any board, board member, officer or employee of the City may request the City Attorney to render an opinion concerning the obligation of the board, board member, officer (other than a member of the Council), or employee under applicable laws to refrain from voting or acting upon any matter, contract, sale or transaction to which the board, board member, officer or employee may be a party, or concerning any situation where it would violate state law or where it may not be in the public interest for the board, board member, officer or employee to act in a particular matter, contract, sale or transaction. Likewise, any elected City officer may request an opinion with respect to any board member.

If the City Attorney receives such a request, the City Attorney shall render a written opinion. If the request is made by an elected City officer concerning a board member, the opinion shall be rendered within ten days of the City Attorney's receipt of the request; provided, however, that if the City Attorney determines that the request does not contain sufficient information upon which to render an opinion, the City Attorney shall notify the person making the request, and the time within which the City Attorney must render the opinion shall not commence until that information has been provided to the City

ARTICLE III FINANCE, BUDGET AND CONTRACTS

Section

Office of Finance

300 Director of Finance; Powers and Duties of Office.

301 Treasury; Treasurer.

302 Funds.

303 Investments.

General Budget

310 Fiscal Year.

311 Budget Estimates to Mayor; Statement of Budget Priorities.

312 Mayor's Proposed Budget.

313 Council Consideration of Budget.

314 Mayor's Veto.

315 Council Consideration of Mayor's Veto Message; Final Adopted Budget.

Expenditures

320 Expenditure Programs.

Debt

325 Debt Impact Statements.

Taxation

330 Use of County System of Assessment and Taxation.

331 Tax Levy.

332 Tax Levy – Alternate Method.

Transfers

Los Angeles Charter and Administrative Code

GENERAL BUDGET

Sec. 310. Fiscal Year.

The fiscal year of the City shall begin on July 1 of each year and shall end on June 30 of the following year.

Sec. 311. Budget Estimates to Mayor; Statement of Budget Priorities.

(a) At the time the Mayor prescribes, but not later than January 1 of each year, each board or officer at the head of any department or office, or other City governmental activity, other than those departments having control of their own funds, shall submit to the Mayor, with copies to the Council and the Director of the Office of Administrative and Research Services, on forms and in the manner prescribed by the Mayor, a detailed estimate of the money required for the next fiscal year for the proper operation of their departments and offices. These estimates shall contain uniform budget classifications and shall clearly set forth the functions performed and the items and services required for such performance. Summaries, schedules and supporting data shall be attached to the estimates. Any department head or officer requesting an increase over the prior year's appropriation shall indicate which classifications need the increase and rank the order of immediate need for each classification. After consultation with an officer or head of a department, the Mayor may refer the estimate back with instructions to prepare a revised estimate on the basis of a maximum sum for the department, office or activity, that maximum sum to be fixed by the Mayor, or with further qualification as the Mayor shall determine. The officer or head of department shall present the revised estimate to the Mayor, with a duplicate to the Council and to the Director of the Office of Administrative and Research Services, at a date fixed by the Mayor.

(b) On or before February 1, the Mayor shall publish his or her budget priorities for the next fiscal year in order to facilitate public comment.

(c) On or before March 1 of each year the Controller shall submit to the Mayor, with a duplicate to the Council and to the Director of the Office of Administrative and Research Services, a detailed statement of the money that the Controller estimates will be required for the interest and sinking funds and for all outstanding bonded indebtedness and other lawful obligations of the City or of special districts and an estimate of the revenue to be derived from fines, licenses and other sources.

Sec. 312. Mayor's Proposed Budget.

On or before April 20 of each year, the Mayor shall submit to the Council a budget for the next ensuing fiscal year setting forth in summary and in detail:

(a) estimates of the expenditures and appropriations necessary for the support of the required work programs of the City government for the ensuing fiscal year, including interest and sinking funds or payments of principal on the bonded indebtedness of the City and of special districts;

(b) detailed estimates of the receipts of the City during the ensuing fiscal year, under laws existing at the time the budget is transmitted, and also under the revenue proposals, if any, contained in the budget;

(c) the expenditures and receipts of the City government during the last completed fiscal year;

(d) estimates of the expenditures and receipts of the City government during the fiscal year in progress;

(e) the amount of annual, permanent or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress, as of June 30 of such year;

(f) balanced statements of:

(1) the condition of the Treasury at the end of the last completed fiscal year;

(2) the estimated condition of the Treasury at the end of the fiscal year in progress; and

(3) the estimated condition of the Treasury at the end of the ensuing fiscal year in case the financial proposals contained in the budget are adopted.

(g) all essential facts regarding the bonds, notes and other lawful obligations of the City;

(h) other financial statements and data necessary or desirable in order to make known in all practical detail the financial condition of the City government;

(i) an Unappropriated Balance, which shall be available for appropriations later in the ensuing fiscal year to meet contingencies as they arise; and

(j) a statement of resources of the Reserve Fund which shall be carried over to the next ensuing fiscal year to meet the cash requirements of the City for the portion of the next ensuing fiscal year prior to the receipt of taxes, or for appropriations to the Unappropriated Balance as provided in the Charter.

Sec. 313. Council Consideration of Budget.

After receiving the budget submitted by the Mayor, and prior to taking action on the budget, the Council shall hold a noticed public hearing. On or before June 1, the Council shall:

(a) approve the budget as submitted by the Mayor; or

(b) modify the budget by disapproving in whole or in part any items, or by increasing or decreasing any item, or by adding new items, and return the budget as modified by the Council to the Mayor. Any action taken by the Council under this section shall be taken by a majority vote of its members.

Upon failure of the Council to return the budget to the Mayor as provided in this section, the budget as submitted by the Mayor to the Council shall be signed by the City Clerk and thereupon become the general City budget for the ensuing fiscal year.

Sec. 314. Mayor's Veto.

The budget as adopted by the Council shall not be held for reconsideration but shall be promptly transmitted by the City Clerk to the Mayor upon whose approval and signature it shall become effective. If the Mayor shall fail to act upon the budget within five days, excluding Saturdays, Sundays and legal holidays, after its adoption by the Council, it shall be signed by the City Clerk and shall thereupon become effective. If the Mayor disapproves of any increase, decrease, omission or insertion of any item of the budget by the Council, the Mayor may veto, restore or otherwise change any item to the amount originally proposed by the Mayor or to any amount between that originally proposed by the Mayor and that adopted by the Council. The Mayor, however, shall have no power to change any description or limitation made applicable to an item by the Council, except to veto the change or to restore the description or limitation to the condition originally proposed by the Mayor. Upon completion of these changes, the Mayor shall within the five day period return the budget to the Council with a statement of action taken.

Sec. 315. Council Consideration of Mayor's Veto Message; Final Adopted Budget.

Upon receipt by the Council of the budget veto message from the Mayor, the Council shall have five days, excluding Saturdays, Sundays and legal holidays, within which to overcome the action of the Mayor relative to any item or items of the budget. Any item or items of the budget which shall have been vetoed, or otherwise changed by the Mayor, and which shall not be, by a two-thirds vote of all of the members of the Council, either readopted notwithstanding the objections of the Mayor or changed to an amount between that as originally adopted by the Council and that as changed by the Mayor, shall remain as modified by the Mayor.

Where the Mayor has changed any description or limitation applicable to an item, the Council, in its action pursuant to this section, shall have no power to alter the description or limitation other than to restore it to the condition in which it was originally adopted by the Council.

Upon the expiration of the Council's five day period, or sooner if the Council by majority vote so directs, the budget as returned by the Mayor, and to the extent modified thereafter by the Council, shall become the general City budget for the ensuing fiscal year and shall not be held for reconsideration but shall be promptly transmitted to the City Clerk, signed by the City Clerk and filed in the office of the Controller.

Disclaimer:

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2011 American Legal Publishing Corporation
techsupport@amlegal.com
1.800.445.5588.

EXHIBIT 2

CHAPTER 8 EMPLOYER - EMPLOYEE RELATIONS

Section

- 4.800 Statement of Purpose.
- 4.801 Definition of Terms.
- 4.810 Employee Relations Board.
- 4.811 Advisory Management Council.
- 4.820 Qualifications of Employee Organizations.
- 4.822 Formal Recognition of Employee Organizations.
- 4.830 Meeting and Conferring and Consulting.
- 4.840 Resolution of Impasses in Meeting and Conferring.
- 4.845 Paid Time off for Representatives of Recognized Employee Organizations.
- 4.850 Advance Notice to Employee Organizations.
- 4.855 Availability of Data.
- 4.857 Employee Rights.
- 4.859 City Management Rights.
- 4.860 Unfair Employee Relations Practices.
- 4.865 Grievance Procedure for Recognized Employee Organizations.
- 4.870 Organization for Relationships with Employee Organizations.
- 4.875 Applicability.
- 4.880 Construction.
- 4.890 Separability.

Sec. 4.800. Statement of Purpose.

It is the purpose of this chapter to establish policies and procedures for the administration of employer-employee relations in city government, the formal recognition of employee organizations and

the resolution of disputes regarding wages, hours and other terms and conditions of employment.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Sec. 4.801. Definition of Terms.

The words and terms defined in this section shall have the following meanings in this chapter. Any term not defined herein which is defined in the Meyers-Milias-Brown Act shall have the meaning set forth therein.

Board – The Employee Relations Board established by this chapter.

City – The City of Los Angeles.

Confidential Employee – An employee who is privy to information leading to decisions of City management affecting employee relations.

Consult or Consultation – To communicate orally or in writing for the purpose of presenting or obtaining views or advising of intended actions.

Day – A calendar day.

Determining Body or Official – The body or official who has final authority to make a decision on matters under discussion within the scope of representation.

Employee Relations – The relationship between the City and its employees and their organizations, or when used in a general sense the relationship between management and employees or employee organizations.

Employee Representation Unit – A group of employees constituting an appropriate unit as provided by this chapter.

Fact-Finding – Identification of the major issues in a particular dispute; reviewing the positions of the parties; and the investigation and reporting of the facts by one or more impartial fact-finders; and, when directed by the Board, the making of recommendations for settlement.

Grievance – Any dispute concerning the interpretation or application of a written memorandum of understanding or of departmental rules and regulations governing personnel practices or working conditions. An impasse in meeting and conferring upon the terms of a proposed memorandum of understanding is not a grievance.

For employees in the representation unit Police Officers, Lieutenant and below, excluded from the definition of grievance set forth above and excluded from the scope of the grievance process are disputes concerning discipline and disputes concerning transfers, promotions, promotional examinations, or probationary employee terminations – whether or not such matters involve discipline.

Impasse – A deadlock, after a reasonable period of time, in the meet and confer process

between the City's management representatives and representatives of recognized employee organizations on matters concerning which they are required to meet and confer in good faith or over the scope of matters upon which they are required to meet and confer.

Joint Council – Two or more qualified employee organizations which have joined together for the purpose of seeking certification as a recognized employee organization for an employee representation unit.

Management Employees – An employee having significant responsibilities for formulating or administering City or Departmental policies and programs.

Management Representative – A person designated by a determining body or official, to carry out the responsibilities specified for a management representative under this chapter.

Mediation – Efforts by an impartial party or parties to assist as intermediaries through interpretation, suggestion and advice, in reconciling disputes regarding wages, hours and other terms and conditions of employment between the City's management representatives and representatives of recognized employee organizations.

Meet and Confer in Good Faith (or Meet and Confer) – The mutual obligation of the city's management representatives and representatives of recognized employee organizations personally to meet and confer within a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation.

Memorandum of Understanding – A written memorandum, jointly prepared by the parties incorporating matters on which agreement is reached through meeting and conferring between the City's management representatives and representatives of a recognized employee organization. The memorandum shall be presented to the appropriate determining body or official of the City for determination and implementation.

Professional Employee – An employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical and biological scientists.

Qualified Employee Organization – An organization which includes employees of the City, which has as one of its primary purposes representing such employees in their relations with the City, and which has complied with the conditions specified in Section 4.820 of this Code.

Recognized Employee Organization – A qualified employee organization or joint council of qualified organizations which has been certified by the Board as the majority representative of employees in an appropriate employee representation unit in accordance with the provisions of Section 4.822 of this Code.

Such certified majority representative shall be the exclusive representative of the employees in the unit, subject to the right of an employee to represent himself as provided in Section 4.857 of this Code.

Regular Employee – An employee who is appointed to a full-time or part-time permanent

position.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Ord. No. 144,210, Eff. 2-10-73; Ord. No. 151,272, Eff. 9-2-78. Second para. added to Grievance definition, Ord. No. 161,882, Eff. 3-17-87.

Sec. 4.810. Employee Relations Board.

a. **Establishment and General Functions.** There is hereby established the Los Angeles City Employee Relations Board consisting of five members, whose terms shall be five years, appointed by the Mayor and confirmed by the City Council, to perform the functions hereinafter set forth.

Each member shall hold office until his successor is appointed and confirmed. If a vacancy occurs during a term, the appointee to said vacancy shall hold office for the remainder of the term and until his successor is appointed and confirmed.

b. **Qualifications of Members.** The members of the Board shall have broad experience in the field of employee relations and shall possess the impartiality necessary to protect the public interest including the interests of the City and its employees.

c. **Appointment and Removal of Board Members.** Board members shall be appointed and may be removed in accordance with the provisions of Charter Section 502.

d. **Organization and Meetings of the Board.** The Board shall meet regularly at least once each month and shall meet at other times upon call of the chairman. Three members shall constitute a quorum and the votes of a majority of the Board members are required for action. Annually, at the Board's July meeting, the members of the Board shall elect a chairman.

e. (Repealed)

f. **Powers and Duties of Board.** The Board shall have the following powers and duties:

(1) To determine employee representation units upon the request of qualified employee organizations and determine any dispute concerning the relationship of employees in new or deleted classes to representation units.

(2) To arrange with the City Clerk or other appropriate agency for elections among employees of an established representation unit to select the recognized employee organization for the unit and to certify the organization determined to be the majority representative.

(3) To determine contested matters involving elections, certification or decertification of recognized employee organizations.

(4) To investigate and determine the validity of charges of unfair employee relations practices, to make findings, and to issue orders to cease and desist which are not in conflict with other provisions of law.

(5) To establish and maintain a list of mediators and other impartial third parties for use as

provided for in this chapter.

(6) To conduct investigations and hold public hearings on all matters relating to the composition of representation units and unfair employee relations practices. Each member of the Board shall have the power to administer oaths and affirmations in any such investigation or public hearing before the Board. The Board shall have the power and authority to examine witnesses under oath. The Board may compel the attendance of witnesses and the production of evidence before it by subpoena to be issued in the name of the City of Los Angeles and to be attested to by the City Clerk. The City Clerk shall, upon the demand of the chairman of the Board, issue the subpoena in the name of the City and attest the same with the seal of the City, and shall in such subpoena direct and require the attendance of the witness and production of evidence before the Board at the time and place specified therein. The Chief of Police shall cause all such subpoenas to be served upon the person named therein.

(7) To determine issues affecting the recognition status of employee organizations involved in a merger, amalgamation, or transfer of jurisdiction between two or more qualified employee organizations.

(8) To select one of its members to act as a hearing examiner pursuant to the provisions of this Code. To appoint nonmember hearing officers to hear unfair employee practice charges. Nonmember hearing officers shall be compensated for each day of hearing and each day required to prepare a report and recommendations to be submitted to the Board, a daily rate equal to the rate allowed for arbitrators, mediators and fact finders, reference being made to the total daily compensation presently divided by the City and the affected employee organization.

(9) Following notice and hearing, to adopt reasonable rules and procedures, consistent with the provisions of this chapter and other laws, and which are necessary in the performance of the duties and powers specified in this chapter.

(10) To appoint an employee to fill the position of Executive Director, and to appoint employees to fill other positions authorized for the Board by the City Council.

(11) To act upon requests for mediation or fact finding in connection with the resolution of impasses as provided in this chapter.

(12) To perform such other duties as may be necessary to carry out the Board's responsibilities under the provisions of this chapter.

g. **Facilities, Supplies and Equipment.** The City Council shall provide compensation, appropriate office facilities and necessary supplies and equipment for the Board and its staff.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Ord. No. 149,241, Eff. 2-11-77; Ord. No. 151,272, Eff. 9-2-78; Subdiv. (1), Subsec. c, Subdiv. (10), Subsec. f, Ord. No. 155,932, Eff. 11-15-81; Subsec. (e), Repealed by Ord. No. 173,308, Eff. 6-30-00, Oper. 7-1-00; Subsec. (c), Ord. No. 173,365, Eff. 7-29-00.

Sec. 4.811. Advisory Management Council.

There is hereby created an Advisory Management Council. The Advisory Management Council shall provide for representation by department managers in personnel management and employee relations with policy-making processes and shall advise and assist the Director of the Office of Administrative and Research Services, the General Manager of the Personnel Department and the managers of operation departments in the development of personnel management and employee relations policies. The Advisory Management Council shall consist of the Director of the Office of Administrative and Research Services, the General Manager of the Personnel Department, a representative appointed by the City Council, a representative of the Mayor, and not more than nine General Managers who shall be appointed by the Mayor, subject to confirmation by the City Council. The Director of the Office of Administrative and Research Services shall serve as chairman of said Council. Members shall serve at the pleasure of the appointing authority.

SECTION HISTORY

Added by Ord. No. 151,272, Eff. 9-2-78.

Amended by: Ord. No. 173,308, Eff. 6-30-00, Oper. 7-1-00.

Sec. 4.820. Qualifications of Employee Organizations.

a. Each employee organization desiring qualification to represent City employees in accordance with this chapter shall file a statement with the City Clerk containing the following:

- (1) The name and address of the organization.
- (2) The objectives of the organization and its charter and/or constitution and/or bylaws.
- (3) The names and titles of its officers.

(4) The names of employees or persons authorized to represent their organization, and whether they are authorized to speak for the organization on all subjects, provided that this list may be supplemented from time to time. This requirement shall not prevent the appearance at the request of an employee or employee organization of an attorney-at-law or an independent consultant in any matter or proceedings.

(5) A statement that membership in such organization is not denied because of race, religious creed, color, sex, national origin or ancestry.

b. The City Clerk shall register each employee organization which complies with the requirements of this section and shall maintain a list of such qualified organizations for use in carrying out the provisions of this chapter.

c. Qualified employee organizations shall promptly notify the City Clerk of any changes in the items specified in Subsection a of this section occurring subsequent to the time of original filing.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Ord. No. 144,210, Eff. 2-10-73.

Sec. 4.822. Formal Recognition of Employee Organizations.

a. **Criteria for Determination of Appropriate Employee Representation Units.** The Board shall consider the following and other relevant factors in determining the appropriateness of representation units:

- (1) The community of interests of employees.
- (2) The history of employee representation in the unit, among other employees of the City and in similar employment.
- (3) The effect of the unit on the efficient operation of the City and sound employee relations.
- (4) The extent to which employees have common skills, working conditions, job duties or similar education requirements.
- (5) The effect on the City's classification structure of dividing a single classification among two or more units.
- (6) The right of professional employees to be represented separately from nonprofessional employees.
- (7) Management or confidential employees shall not be included in the same unit with other employees.

b. **Petition for Certification as Majority Representative.** A qualified employee organization or joint council of qualified organizations desiring certification as the recognized employee organization of a proposed representation unit, shall file with the Board a petition in a form prescribed by the Board containing the information specified below. The Board shall immediately post a notice in a place in its office which is open to the public that the petition has been filed.

- (1) A statement specifying all of the class titles of the positions in the proposed representation unit and the departments and bureaus in which such positions are located.
- (2) Written proof satisfactory to the Board dated within a period prescribed by the Board that the organization represents at least 30 percent of the regular employees in the proposed unit.
- (3) A request that the Board certify the organization as the recognized employee organization representing a majority of the regular employees in the proposed representation unit.

c. **Processing Requests for Certification.** Petitions for certification shall be processed as provided below. It is the intent of this chapter that all proceedings and actions in connection therewith be conducted and taken as expeditiously as possible.

- (1) Upon receipt of a petition for certification as the recognized employee organization for a proposed representation unit, the Board shall review the information submitted for compliance with the requirements specified in Subsection b of this section. In investigating the appropriateness of proposed representation units, the Board shall obtain and consider the reports

and recommendations of the Personnel Department which shall take into consideration the views of all concerned departments and officers, and the effect on the City. Affected qualified employee organizations may submit their views concerning the proposed units, which views shall also be considered by the Board.

(2) Formal recognition shall be determined by election.

(3) Qualified employee organizations and joint councils, other than the petitioning organization or joint council, may intervene to seek consideration as the majority representative in a representation proceeding. In order to be eligible for consideration as an intervening organization, a qualified employee organization, or joint council must present within a period specified by the Board written proof satisfactory to the Board dated within a period specified by the Board that it represents at least 10 percent of the employees in the proposed unit. The Board shall then hold a hearing and determine the appropriate unit in accordance with the considerations prescribed in Subsection a of this section. The Board shall at the same time the unit is determined, determine the organizations which shall appear on the ballot, if an election is required, and notify the employee organizations and the departments concerned.

(4) After the representation unit has been finally determined, the Board shall, if an election is required, arrange for a secret ballot election to be conducted by the City Clerk or other agency designated by the Board. The choice of "no organization" shall also be included on the ballot. Regular employees in the unit shall be entitled to vote in such election if they were employed during a period of time, specified by the Board, immediately prior to the pay period within which the election is held. Those employees shall be included who did not work during such period because of illness, vacation or authorized leave of absence. An employee organization or joint council shall be certified by the Board as the majority representative following an election or runoff election if such organization has received the vote of a numerical majority of the employees voting in the unit in which the election is held (i.e. in excess of 50 percent of the valid votes of all employees voting).

(5) In an election involving three or more choices, where none of the choices received a majority of the votes in accordance with Paragraph (4) above, a runoff election shall be conducted between the two choices receiving the largest number of votes.

(6) At least six months shall elapse following an election without a majority representative being chosen before a petition for certification may be filed covering the same group of employees.

d. **Notification of Election Results and Certification.** The City Clerk or other agency conducting the election shall transmit the election results to the Board, and the Board shall notify affected employee organizations and departments of the election results and of its certification of the employee organization, if any, winning the election.

e. **Duration of Certification.** When an employee organization or joint council have been certified as the majority representative of an appropriate unit, certification shall remain in effect for one year from the date thereof, and thereafter, until the organization is decertified as provided in Subsection f of this section.

f. **Decertification.**

(1) When a petition for decertification alleging that a certified employee organization or joint council is no longer the majority representative of employees in an appropriate representation unit may be filed with the Board by an individual employee, a group of employees or their representatives, a qualified employee organization or a joint council of qualified employee organizations.

(2) The petition may be filed at any time after completion of the certified employee organization's first year of certification. Provided, however, that the Board may prescribe additional restrictions on the time of filing a petition during the terms, if any, of approved memorandum of understanding entered into by such organization.

(3) The petition shall be in a form prescribed by the Board and shall include written proof satisfactory to the Board dated within a period specified by the Board that at least 30 percent of the employees in the unit do not desire to be represented by the currently certified employee organization. The petition may be accompanied by a petition for certification.

(4) If the Board determines that petition requirements have been met, it shall arrange for an election which shall be held in accordance with the election provisions of Subsection c(4) of this section, to determine whether the currently certified organization shall be decertified. Such organization shall be decertified if so determined through the election process.

(5) A decertification election may be held concurrently with a representation election where the Board considers it appropriate to do so.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Subsec. c(2), c(4), Ord. No. 151,272, Eff. 9-2-78.

Sec. 4.830. Meeting and Conferring and Consulting.

a. Meeting and Conferring.

(1) The scope of meeting and conferring in good faith between management representatives and representatives of recognized employee organizations includes, but is not limited to wages, hours, and other terms and conditions of employment within the employee representation unit.

(2) Meeting and conferring shall not be required on any matter preempted or specifically provided for by Federal or State law or the City Charter, nor shall meeting and conferring be required on the exercise of Employee Rights or City Management Rights as defined in Section 4.857 and 4.859 of this Code. Rules and regulations adopted pursuant to Government Code Sections 3504.5 and 3507 and Rules of the Employee Relations Board and proposed amendment thereto are excluded from the scope of meeting and conferring but are subject to consultation as provided below.

(3) Requests for meeting and conferring by recognized employee organizations on matters requiring major budgetary financing shall be submitted to the management representative of the City Council in time for adequate discussion, consideration and action in connection with the budget.

(4) Meetings on those matters which affect employees generally may be held jointly with representatives of recognized employee organizations representing all of the affected employees.

b. **Consultation.**

(1) The scope of consultation between management representatives and representatives of affected qualified employee organizations includes employee relations matters that are specifically excluded from or otherwise not subject to the meet and confer process.

(2) Every reasonable effort shall be made to have such consultations prior to effecting basic changes in any rule or procedure affecting employee relations.

(3) Requests for consultation shall be directed to the management representative of the determining body or official having jurisdiction over the matter to be discussed.

(4) In those instances where the Board has certified a qualified employee organization as the recognized employee organization for a particular representation unit, representatives of other qualified organizations having members in that unit shall not have the right to consult on employee relations matters on behalf of employees in said unit.

c. **Referral of Requests.** Requests on matters within the scope of representation submitted to the City Council shall stand automatically referred to the management representative of the Council for review and processing pursuant to the provisions of this chapter.

d. **Management and Confidential Employees.** Management and confidential employees as defined in Section 4.801 of this Code shall be designated by departments in consultation with the Personnel Department. Management and confidential employees shall not represent any employee organization which represents other employees on matters within the scope of representation. In the event a dispute arises with a qualified employee organization over such designations the matter may be appealed to the Board for determination.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Ord. No. 144,210, Eff. 2-10-73.

Sec. 4.840. Resolution of Impasses in Meeting and Conferring.

a. **Processing of Impasses Involving Proposed Changes to the Los Angeles City Charter.**

(1) If after a reasonable period of time the management representative and representatives of a recognized employee organization reach an impasse, declared by any party, on any matter subject to the meet and confer process requiring an addition to, deletion from, or amendment of any provision of the Los Angeles City Charter, the meet and confer process shall be deemed to have been completed. The impasse shall then be presented to the City Council for final determination.

(2) The Board shall have no jurisdiction over any impasse failing fully under the provisions of this subsection or over that portion of any multiple issue impasse for which this subsection applies.

b. Processing of Impasses Not Involving Proposed Changes to the Los Angeles City Charter.

(1) If after a reasonable period of time the management representative and representatives of a recognized employee organization reach an impasse on any matter not requiring an addition to, deletion from, or amendment of any provision of the Los Angeles City Charter, either party or parties may request the assistance of the Board in resolving the impasse.

(2) If the Board finds that the parties have not devoted sufficient time or effort to resolving the impasse, it may deny the request and return the matter to the parties for further consideration.

(3) If the Board concludes that in fact an impasse exists on matters not subject to the provisions of Subsection a, above, it may appoint one or more mediators or fact-finders to assist the parties.

(4) Fact-finding shall be limited to those issues originally referred for dispute settlement as determined by the Board.

Fact-finding proceedings shall be private. The fact-finding report shall be filed with the Board. The Board shall, within five calendar days, transmit copies thereof to the parties and may, in its discretion, make the report public.

(5) The Board shall adopt time limits and other restrictions on the fact-finding process substantially in accordance with the recommendations of the fact-finder in Impasse No. 110. A copy of the fact-finder's recommendations in Impasse No. 110 is on file at the offices of the Employee Relations Board.

c. Cost of Impasse Resolution Procedures. The expense of mediation or fact-finding procedures shall be payable one-half by the City and one-half by the recognized employee organization. The City shall furnish meeting space when required for such proceedings.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Subsecs. a and b, Ord. No. 161,787, Eff. 1-9-87.

Sec. 4.845. Paid Time Off for Representatives of Recognized Employee Organizations.

Reasonable time off without loss of pay shall be granted to employees serving as authorized representatives of recognized employee organizations when formally meeting and conferring during regular working hours with City management representatives on matters within the scope of representation. The number of employees granted such time off shall be based on a ratio of one for each 100 employees in the employee representation unit, provided that the number shall not be less than two, nor more than seven, or other such number as mutually agreed upon by the parties. Only those employees whose active participation in the conduct of such meetings is necessary shall be authorized paid time off.

SECTION HISTORY

Added by Ord. No. 141,257, Eff. 3-5-71.

Amended by: Ord. No. 151,272, Eff. 9-2-78.

Sec. 4.850. Advance Notice to Employee Organizations.

a. A determining body or official shall give reasonable advance written notice to each qualified employee organization affected, of any ordinance, rule, resolution or regulation within its jurisdiction directly relating to matters within the scope of representation proposed to be adopted by the determining body or official and shall give such organization an opportunity to consult with the determining body or official, subject to the restrictions on the right to consultation contained in Section 4.830b(4).

b. In cases of emergency, when such an ordinance, rule, resolution or regulation must be adopted immediately without prior notice to qualified employee organizations effected, notice shall be given by the appropriate determining body or official, and an opportunity to consult shall be given to each organization subject to the restrictions on the right to consultation contained in Section 4.830(b) at the earliest practical time following the adoption of such ordinance, rule, resolution or regulation.

c. The provisions of Subsections a and b shall not apply to any ordinance, rule, resolution or regulation prepared or adopted pursuant to a Memorandum of Understanding.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Ord. No. 144,210, Eff. 2-10-73.

Sec. 4.855. Availability of Data.

a. The City will make available to employee organizations such non-confidential information pertaining to employment relations as is contained in the public records of the City, subject to the limitations and conditions set forth elsewhere in the Los Angeles Administrative Code and in the California Public Records Act.

b. Such information shall be made available during regular office hours in accordance with the City's rules and procedures.

c. Information which shall be made available to employee organizations includes regularly published data covering subjects under discussion. Data collected on a promise to keep its source confidential may be made available in statistical summaries, but shall not be made available in such form as to disclose the source.

d. Upon the setting of an election by the Board, the Personnel Department shall, upon request of a qualified organization approved for inclusion on the ballot, furnish a list of the names and departments of employees in the representation unit. The list shall be made available a reasonable time in advance of the election.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Sec. 4.857. Employee Rights.

Employees of the City shall have the right to form, join, and participate in the activities of employee organizations of their own choosing pursuant to the provisions of this chapter for the purpose of representation on matters of employee relations, other than those excluded herein. City employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Sec. 4.859. City Management Rights.

Responsibility for management of the City and direction of its work force is vested in City officials and department heads whose powers and duties are specified by law. In order to fulfill this responsibility it is the exclusive right of City management to determine the mission of its constituent departments, offices and boards, set standards of services to be offered to the public and exercise control and discretion over the City organization and operations. It is also the exclusive right of City management to take disciplinary action for proper cause, relieve City employees from duty because of lack of work or other legitimate reasons and determine the methods, means and personnel by which the City's operations are to be conducted and to take any necessary actions to maintain uninterrupted service to the community and carry out its mission in emergencies; provided, however, that the exercise of these rights does not preclude employees or their representatives from consulting or raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment; provided, however, that employees in the representation unit Police Officers, Lieutenant and Below or their representatives may not raise such grievances.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Last line section para., Ord. No. 161,882, Eff. 3-17-87.

Sec. 4.860. Unfair Employee Relations Practices.

- a. It shall be an unfair employee relations practice for management:
- (1) To interfere with, restrain, discourage, or coerce employees in the exercise of their rights granted in this chapter;
 - (2) To attempt to dominate or control any employee organization;
 - (3) To refuse to meet and confer in good faith at reasonable times, places and frequencies with representatives of recognized employee organizations or to refuse to consult upon request with qualified employee organizations on matters which are properly within the scope of representation, where no recognized employee organization exists.
 - (4) To fail or refuse to cooperate in impasse procedures invoked under the provisions of this chapter.

(5) To discriminate against any employee because of race, religion, color, sex, national origin, ancestry, age, disability, marital status or sexual orientation with regard to terms and conditions of employment except as required by law or where based on a *bona fide* occupational qualification.

b. It shall be an unfair employee relations practice for employees, employee organizations or their representatives:

(1) To interfere with, restrain or coerce employees on the exercise of their rights granted in this charter.

(2) To discriminate against any employee because of race, religious creed, color, sex, national origin, or ancestry of any person with regard to the terms and conditions of membership in an employee organization.

(3) Additionally, it shall be an unfair employee relations practice for a certified employee organization to refuse to meet and confer in good faith at reasonable times, places and frequencies with City management representatives on matters which are properly within the scope of representation, to fail or refuse to cooperate in impasse procedures invoked under the provisions of this chapter, or for the Los Angeles Police Protective League to intentionally fail or refuse to comply with any provisions of a memorandum of understanding reached by the parties. Should the Los Angeles Police Protective League be abolished, this provision shall apply to any board or organization created to assume its functions as the recognized employee organization.

c. Claims of unfair employee relations practices under this section may be made by employee representatives, an individual employee or a group of employees, or by a management representative. Such claims shall be processed by the Board in accordance with its rules.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Ord. No. 144,210, Eff. 2-10-73; Para. (5), Ord. No. 173,004, Eff. 2-3-00, Oper. 7-1-00; Subsec. (b)(3), Ord. No. 173,513, Eff. 9-26-00.

Sec. 4.865. Grievance Procedure for Recognized Employee Organizations.

a. The management representative principally responsible for meeting and conferring with a recognized employee organization shall meet and confer with the representatives of such employee organization to develop a grievance procedure for employees in the representation unit, to be incorporated into any memorandum of understanding reached by the parties. Such grievance procedure shall apply to all grievances, as defined in Section 4.801 of this Code, shall provide for arbitration of all grievances not resolved in the grievance procedure, and shall conform to the following standards:

(1) Provision shall be made for discussion of the grievance first with the employee's immediate supervisor on an informal basis;

(2) Provision shall be made for the filing of a formal grievance in writing, and for the processing of the unresolved grievance through not more than four, nor less than two, levels of review with written notice of the results of each such review to the employee and to his representative, if any;

(3) An employee may be represented by a representative of the employee's choice in the informal discussion with the employee's immediate supervisor, in all formal review levels, and in arbitration; provided, however, that such representative may not be an employee or officer of another qualified organization except with the written consent of the organization granted exclusive representation.

(4) If the grievance is not resolved in the grievance procedure either party may submit the grievance to arbitration by written notice to the other party of its desire to arbitrate. Following such notice the parties shall meet for the purpose of selecting an arbitrator from a list of seven arbitrators to be furnished to the parties by the Board. In selecting the arbitrator from said list, the parties shall alternately strike names from the list until one name remains. The arbitrator remaining shall hear the case. In the event he is unable to hear the case, the parties shall obtain a new list of seven arbitrators and shall select a new arbitrator in the manner set forth above. With respect to grievances involving the Departments of Airports, Harbor, Water and Power, Library, Recreation and Parks, Pensions and City Employees' Retirement System the decision of the arbitrator shall be advisory only.

With respect to grievances involving all other City departments, the decision of the arbitrator shall be final and binding on the parties;

(5) All expenses of arbitration, including the arbitrator's fee shall be shared equally by the parties.

b. The Board shall maintain a list of neutral professional arbitrators and shall, upon request of any party, furnish to the parties to the dispute a list of seven arbitrators for selection of an arbitrator to arbitrate an unresolved grievance, as set forth above.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Subsec. (a), Ord. No. 144,462, Eff. 3-1-73; Subsec. a(3), Ord. No. 151,272, Eff. 9-2-78.

Sec. 4.870. Organization for Relationships with Employee Organizations.

a. Designation of Management Representative.

(1) The Director of the Office of Administrative and Research Services, or the employee authorized by him to act in such capacity, is hereby designated as the City's management representative in formal relationships with representatives of recognized employee organizations on matters which are properly within the scope of representation on which the City Council is the determining body.

(2) The chief administrative officer of each City department or office, or the employee authorized by him to act in such capacity, is hereby designated as the City's management representative in formal relationships with representatives of recognized employee organizations on matters which are properly within the scope of representation and on which the head of the department or office is the determining body or official.

b. Responsibilities of Management Representatives.

It shall be the responsibility of the City's management representatives to:

(1) Personally, or through duly authorized representatives, meet and confer in good faith and endeavor to reach agreement with representatives of recognized employee organizations.

(2) Review the progress of meeting and conferring with the determining body or official to receive advice and instructions.

(3) Jointly, with representatives of recognized employee organizations, prepare and sign written memorandums of understanding incorporating all matters agreed on through meeting and conferring in good faith.

(4) Present the memorandums of understanding to the determining body or official for determination.

(5) If, after a reasonable period of time, agreement is not reached, review the matter with the determining body or official to determine what further action should be taken.

c. Approval of Memorandum of Understanding.

(1) Memorandums of understanding on matters concerning which the City Council is the determining body shall become effective when approved by the City Council. Where an ordinance is required to effectuate the Memorandum, it shall become effective upon the effective date of the ordinance.

(2) Memorandums of understanding on matters concerning which the head of a department or office is the determining body or official shall become effective when approved by such body or official.

d. Coordination of Employee Relations.

(1) The Director of the Office of Administrative and Research Services shall:

(a) Keep the Mayor and City Council informed regarding the status of employee relations activities in the City.

(b) Establish a unit in his office to provide advice and technical staff assistance to department and office heads and management representatives in meeting and conferring with representatives of recognized employee organizations, preparing memorandums of understanding, dealing with impasses, carrying out other duties concerning the employee relations program, and to assure reasonable uniformity among departments in all aspects of the City's employee relations program.

(c) Maintain a central clearing house of information for departments on recognized employee organizations, status of discussions in progress, agreements reached and other information relating to the operation of the employee relations program.

(d) Monitor and evaluate the employee relations program and recommend appropriate revisions to policy, procedures and rules to determining bodies or officials.

(e) Maintain liaison with and, upon request, provide assistance to the employee relations staffs of departments having control of their own funds in carrying out his coordinating responsibilities.

(f) Provide reports and recommendations to the Personnel Department concerning the appropriateness of proposed employee representation units.

(g) Issue bulletins from time to time, after consulting with affected employee bargaining units, interpreting Memorandum of Understanding provisions, where a literal interpretation of the language may not reflect the intent of the parties or where the language does not clearly outline procedures to be used in certain isolated circumstances. The Controller and other City departments may further request clarification of Memorandum of Understanding provisions from the Director of the Office of Administrative and Research Services where there is an indication that the provisions are not being uniformly interpreted through the City. Such interpretive bulletins shall be reviewed and approved by a representative of the City Attorney and by the Personnel Committee of the City Council prior to their issuance.

(2) The General Manager Personnel Department shall:

(a) On those issues and elements of the employee relations program involving Personnel Department responsibilities, provide reports and recommendations to the Board and provide advice and assistance to department heads and management representatives. Keep the Mayor and City Council and other officials advised of such matters.

(b) Issue guidelines for departmental working rules.

(c) Coordinate the views of concerned departments on the appropriateness of proposed representation units and provide reports and recommendations thereon to the Board.

(d) Maintain liaison with and provide assistance to the employee relations staff of departments having control of their own funds on those issues involving Personnel Department responsibilities.

(e) Provide training to assist operating departments in the handling of employee relations in accordance with Administrative Code Sections 4.311 through 4.316.

(3) The management representative of each determining body or official shall:

(a) Provide advice and recommendations to the Personnel Department concerning the appropriateness of proposed employee representation units.

(b) Provide in accordance with the provisions of Administrative Code Sections 4.311 through 4.316, and in cooperation with the Personnel Department, training for departmental management and supervisory, personnel in the handling of employee relations.

(c) Notify the Director of the Office of Administrative and Research Services of the

status of employee relations activities; such as, grievances, claims of unfair employee relations practices, and of requests to meet and confer in good faith.

(d) Notify the Personnel Department of the status of all employee relations activities involving Personnel Department responsibilities.

e. Executive Employee Relations Committee.

(1) There is hereby established an Executive Employee Relations Committee consisting of the Mayor, the President and President Pro-Tem of the City Council, the Chairperson of the Personnel Committee of the City Council or a member thereof to be designated by the Chairperson, and the Chairperson of the Budget and Finance Committee.

(2) The Committee shall meet at the call of the Mayor until it has selected a chairperson, after which it shall meet at the call of the chairperson. Such meetings shall be in closed session except when otherwise prohibited by law. Any member of the Council may attend any meeting of the Committee.

(3) It shall be the duty of the Committee to meet no later than April 1 of each year with the City's management representative to give advice and instructions with respect to the City's bargaining position in the meet and confer process.

(4) The Committee shall also advise the Council with respect to salaries set by ordinance.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Subsec. e, added, Ord. No. 150,940, Eff. 7-2-78; Para. (g), Subdiv. (1), Subsec. d., added by Ord. No. 150,964, Eff. 7-8-78; Subdiv. (2), Subsec. e, Ord. No. 161,892, Eff. 2-16-87; Subsec. d., Subdiv. (g), Subsec. e., Subdiv. (1), Ord. No. 164,741, Eff. 5-27-89, Oper. 7-1-89; Ord. No. 173,308, Eff. 6-30-00, Oper. 7-1-00.

Sec. 4.875. Applicability.

This chapter shall apply to all departments offices and bureaus of the City.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Amended by: Ord. No. 141,934 amends Ord. No. 141,527, Eff. 5-30-71; Ord. No. 144,462, Eff. 3-1-73.

Sec. 4.880. Construction.

a. Nothing in this chapter shall be construed to deny any person or employee the rights granted by Federal and State laws and the provisions of the City Charter.

b. The rights, powers and authority of the City Council in all matters, including the right to maintain any legal action, shall not be modified or restricted by this chapter.

c. The enactment of this chapter shall not be construed as making the provisions of Section 923 of

the California Labor Code applicable to employees of the City.

d. The provisions of this chapter are not intended to conflict with provisions of the Meyers-Milias-Brown Act.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Sec. 4.890. Separability.

If any provision of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this chapter. The Council of this City hereby declares that it would have adopted this chapter and each provision thereof irrespective of the fact that any one or more provisions be declared invalid or unconstitutional.

SECTION HISTORY

Added by Ord. No. 141,527, Eff. 3-5-71.

Disclaimer:

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2011 American Legal Publishing Corporation
techsupport@amlegal.com
1.800.445.5588.

EXHIBIT 3

CITY OF LOS ANGELES

BEFORE THE EMPLOYEE RELATIONS BOARD

DECISION NO. U-214

IN THE MATTER OF)
)
ENGINEERS AND ARCHITECTS ASSOCIATION,)
)
 Claimant,)
 - and -)
) *CITY OF LOS ANGELES*)
) *Respondent.*)

*UNFAIR EMPLOYEE
 RELATIONS PRACTICE
 CLAIM NO. 1768*

Whether decision to furlough within scope;)
 significance of management rights clause)
 and declaration of fiscal emergency; requirement)
 to mitigate damages.)

DECISION AND ORDER

Pursuant to a Notice of Hearing dated December 23, 2009, a hearing in the captioned matter was held in person on January 19-21, 2010 and on March 10, 2010 by telephone before Hearing Officer David Stiteler to resolve an Unfair Employee Relations Practice Claim filed by Engineers and Architects Association (“Claimant”) against the City of Los Angeles (“Respondent”) pursuant to Sections 4.860 and 4.810 f (4), (6), and (8) of the Los Angeles City Employee Relations (“Ordinance”). The parties were given full opportunity to present evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs with the hearing officer.

The hearing officer filed his Report and Recommendation with the Los Angeles City Employee Relations Board (“Board”) on July 2, 2010. Exceptions to that report were filed by Respondent on August 2, 2010 and by Claimant on August 4, 2010. Claimant filed a rebuttal to Respondent’s exceptions on August 13, 2010. Following oral argument by the parties and discussion among the Board Members, at its meeting of August 23, 2010, the Board remanded the matter to the hearing officer with questions to which he was asked to respond.

DECISION NO. U-214

The hearing officer filed his Supplemental Report on December 29, 2010. Claimant filed exceptions to the Supplemental Report on February 14, 2011. Respondent submitted a rebuttal to Claimant's exceptions on March 10, 2011 and the matter was again considered by the Board at its meeting of March 21, 2011. At that time the Board held as follows.

The Board agrees with and adopts the conclusions contained in paragraphs 1 through 4 in the hearing officer's initial report finding that both the effects of a decision to implement furloughs and the decision itself are mandatory subjects of bargaining, that Respondent altered the status quo in implementing furloughs, and that neither the management rights clause in the Ordinance nor that in the memorandum of understanding amounts to a clear and unequivocal waiver of Claimant's right to bargain over those issues. An emergency did exist, which excused the City from the normal duty to complete the meet and confer process before acting on the decision to furlough employees. However, because the City announced that it would not bargain over the decision and refused to bargain with EAA over the decision itself, Respondent's refusal to bargain over the decision to impose furloughs violated the Employee Relations Ordinance.

The Board disagrees with the hearing officer that the salient circumstances "blurred the distinction between decision and effects bargaining" so as to render that distinction moot. Imposition of furloughs clearly has an impact on wages and hours and the Ordinance requires that, with certain exceptions not relevant here, such topics are within the scope of the meet and confer obligation. Therefore, Respondent's refusal to bargain over the decision to impose furloughs violated the ERO.

No exceptions having been taken to the hearing officer's conclusion in paragraph 6, the Board agrees with his conclusion that "[t]he City did not unilaterally change a matter within the scope of bargaining by sending the displacement election form to EAA-represented employees whose positions could have been affected by planned layoffs."

The Board does not adopt the hearing officer's conclusion contained in paragraph 5 that "[t]he City did not unlawfully refuse to bargain with EAA on the subject furloughs after adopting the fiscal emergency declaration and urgency ordinance."

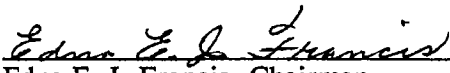
The Board also does not adopt the hearing officer's conclusion contained in paragraph 7 that "UERP Claim No. 1768 should be denied and dismissed in its entirety."

In sum, the Board believes that Claimant's conduct as found by the hearing officer exhibits an absence of the requisite effort to mitigate damages through engaging in effects bargaining. On that basis, and because subsequent to issuance of the original hearing officer decision the parties reached an agreement eliminating all furloughs, the remedy will be limited to ordering Respondent to cease and desist from refusing to meet and confer over the decision to impose furloughs.

Therefore, Respondent shall post, where copies of notices to employees represented by Claimant are normally posted, a copy of the attached Order for a minimum of seven days.

DECISION NO. U-214

BY ORDER OF THE BOARD.



Edna E. J. Francis, Chairman

DATED: April 25, 2011
Los Angeles, California



LOS ANGELES CITY EMPLOYEE RELATIONS BOARD

200 NORTH MAIN STREET, SUITE 1100
LOS ANGELES, CALIFORNIA 90012-4124
TELEPHONE: (213) 473-9700
TDD: (213) 485-5136
FAX: (213) 473-7751

Edna E.J. Francis
Chairman
R. Douglas Collins
Fredric R. Horowitz
Manuel M. Melgoza
Robert R. Bergeson
Executive Director

ORDER

UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIM NO. 1768

Pursuant to Section 4.810f (4) of the Los Angeles City Employee Relations Ordinance, having determined that a violation of Section 4.860 (a) (1) and (3) of said Ordinance has occurred, the Employee Relations Board of the City of Los Angeles hereby finds and orders that:

1. Respondent City of Los Angeles and its agents and representatives shall cease and desist from refusing to meet and confer with Claimant Engineers and Architects Association over the decision to impose furloughs.
2. Respondent City of Los Angeles shall post, where copies of notices to employees represented by Engineers and Architects Association are normally posted, a copy of this Order for a minimum of seven (7) days and shall, within ten (10) days from receipt of this Order, furnish the Employee Relations Board with a letter indicating the date and manner of compliance.

BY ORDER OF THE BOARD.


EDNA E. J. FRANCIS, Chairman

DATED: April 25, 2011
Los Angeles, California



City of Los Angeles v. Superior Court of Los Angeles (Engineers & Architects Association, Real Party in Interest), California Supreme Court, No. S192828

PROOF OF SERVICE BY UNITED PARCEL SERVICE (UPS) – NEXT DAY

I declare that I am employed in the County of San Francisco, California. I am over the age of eighteen years and not a party to the within cause; my business address is 44 Montgomery Street, Suite 400, San Francisco, CA 94104. On September 26, 2011, I served the enclosed:

MOTION TO TAKE JUDICIAL NOTICE

on the parties in said cause (listed below) by enclosing a true copy thereof in a prepaid sealed package, addressed with appropriate United Parcel Service shipment label and, following ordinary business practices, said package was placed for collection (in the offices of Carroll, Burdick & McDonough LLP) in the appropriate place for items to be collected and delivered to a facility regularly maintained by United Parcel Service. I am readily familiar with the Firm's practice for collection and processing of items for overnight delivery with United Parcel Service and that said package was delivered to United Parcel Service in the ordinary course of business on the same day.

Janis Levart Barquist, Esq.
Jennifer Maria Handzlik, Esq.
Carmen A. Trutanich
Office of the Los Angeles City Attorney
200 North Main Street, Room 800
Los Angeles, CA 90012

Counsel for Petitioner City of Los Angeles

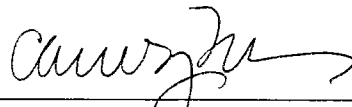
Frederick Bennett
Superior Court of Los Angeles
111 North Hill Street, Room 546
Los Angeles, CA 90012

Counsel for Respondent Superior Court of Los Angeles

Hon. Gregory Alarcon
Superior Court of Los Angeles
111 North Hill Street, Dept. 36
Los Angeles, CA 90012

Trial Judge

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 26, 2011, at San Francisco, California.



Carrie Takahata