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May 21, 2008

Board of Civil Service Commissioners
700 E. Temple Street, Room 360
Los Angeles, CA 90012

Re: Opposition to Proposed Changes to Civil Service Rule 8.7

Dear Commissioners:

This office represents the Coalition of L.A. City Unions. The Personnel Department invites the Board to adopt its proposed changes to Civil Service Rule 8.7. Because the changes would undermine the City's Charter, the Board should decline to do so.

First, the proposal would create a broad, unprecedented exception to the Charter's explicit preference for layoff suspensions and restorations to be conducted "**based upon seniority**" [Charter Sec. 1015 (emphasis supplied)]. Currently, Civil Service Rule 8.7 provides a very narrow exception to the Charter's express seniority preference for unpredictable circumstances, such as "inclement weather" or an "unforeseen reason." A "financial emergency as declared by the City," here "a structural deficit of \$20 million for this Fiscal Year (FY) 2007-08 and an **anticipated** structural deficit of \$406 million for 2008-09," is hardly unpredictable or unforeseen. In fact, the Personnel Department recognizes in its proposal that the City has already been able to reduce the deficit dramatically through budget cuts, and it anticipates taking continued action to reduce next fiscal year's projected deficit.

The proposed triggering event – a financial emergency as declared by the City – is fraught with subjectivity, potentially eviscerating the Charter's preference for seniority-based layoffs. Allowing a deficit – the product of a considered and lengthy budget process – to constitute a financial emergency demonstrates how the proposal blows open the narrow exception for unpredictable circumstances, so as to be "inconsistent with the provisions" of the Charter's layoff section [Charter Sec. 1015]. *See Bruce v. Civil Serv. Bd. of Oakland*, 6 Cal. App. 2d 633, 636-637 (1935) ("It is a general principle of statutory construction as applied to charters, that latitude is given to civil service boards to adopt rules governing method of examination and markings, **so long as the rules so made are within the provisions of the charter and in**

consonance with the fundamental principles thereof." (emphasis supplied)). Moreover, the Department justifies its proposal by asserting that "the City is faced with a significant financial situation that was brought upon by . . . [among other things] high unemployment." Yet, California's current unemployment rate of 6.2 percent is not high when the California unemployment rate has averaged 7.6 percent, with a range of 4.7 to 9.9 percent, since 1990 [according to the Employment Development Department]. Reliance on unsupported assertions further illustrates why linking an exception to a subjective determination could jeopardize the Charter's established preference for seniority-based layoff determinations.

Second, the Board's consideration of providing 21 days' notice of its intention to amend Rule 8.7 misses the critical fact that the law does not allow an employee organization to waive members' right to an objective seniority-based determination as provided for in the Charter. *See Zavala v. Scott Bros. Dairy, Inc.*, 143 Cal. App. 4th 585, 595 (2006) ("[T]he Union could not waive the[statutory] rights guaranteed to them as individual employees."). Thus, even if the Board were to provide employee organizations the opportunity to meet and confer about the proposed Civil Service Rule revisions before any determination is made, the employee organizations would be unable to waive their members' personal right to an objective seniority-based layoff determination.

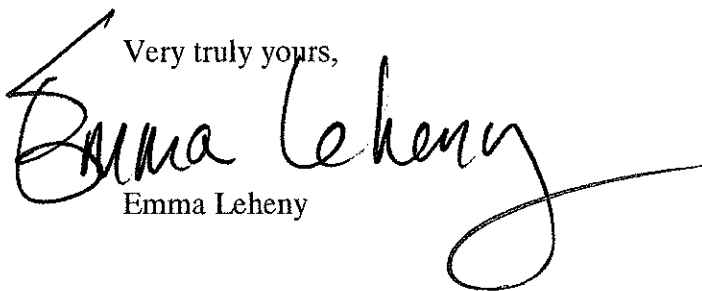
Third, the proposed changes directly conflict with the five-year Letter of Agreement, reached just last year, between the City and the Coalition of L.A. City Unions [Agreement Enclosed]. The Agreement provides if City revenue declines by 1% or more, "the parties will meet, using the mutual gains process, to identify the implications of the revenue loss, alternatives to address the loss and identify viable solutions within the control of the parties." The proposal, by allowing the City to declare a financial emergency and then unilaterally institute layoffs based upon whatever method it chooses, provides a basis for the City to attempt to circumvent its contractual duty to use the mutual gains process in financially difficult times. Adopting the proposal would incorrectly signal that the City can act unilaterally, thereby breaching the earlier Agreement.

Fourth, the proposal's abandonment of objective seniority-based layoff determinations would open the City up to due process and disparate impact challenges. *See, e.g., Levine v. City of Alameda*, – F.3d –, 2008 WL 2025011, *1-2 (9th Cir. 2008) (holding the due process rights of a city employee, who believed his layoff was a pretext, were violated); *see also Jones v. Omnitrans*, 125 Cal. App. 4th 273, 280 (2004) ("The right to due process is a personal one, and California courts have held that a collective bargaining agreement may not waive an employee's right to due process."). The cost of defending potentially hundreds of employee lawsuits resulting from the proposed revisions certainly would not improve the City's deficit.

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For the foregoing reasons, the Coalition of L.A. City Unions urges the Commissioners to vote "no" on the motion to revise Civil Service Rule 8.7.

Very truly yours,

A handwritten signature in black ink that reads "Emma Leheny". The signature is written in a cursive style with a large, sweeping flourish at the end of the word "Leheny".

Emma Leheny

EL/rr
Enclosure

LETTER OF AGREEMENT
2007-2012 MEMORANDUM OF UNDERSTANDING

Mutual Commitment to LA's Future

The City of LA and AFSCME have concluded negotiations for the Memoranda of Understanding effective July 1, 2007 through June 30, 2012. This is a historic contract because it was reached through the mutual gains process and addresses critical issues that both parties identified as key interests that had to be resolved during the term of this contract. In order to address those issues effectively, a five year contract was essential. However, the parties recognize that due to the extended term of the contract and the uncertainty both positive and negative of: the local economy, city revenue, revenue from state and federal budgets and adverse litigation, it is essential that both parties maintain the ability to address these uncertainties.

The first uncertainty faced by the parties is the potential adverse revenue implications of a negative ruling in the Telephone User Tax litigation. In the event the Telephone User Tax litigation ruling is unfavorable to the City of Los Angeles and an alternate replacement revenue source is not approved by the voters, the parties to this agreement will meet, using the mutual gains process, to identify the implications of the revenue loss, alternatives to address the revenue loss and viable solutions within the control of the parties.

To address future uncertainties, the parties agree to meet at a minimum every six months to review the City's overall revenue and expenditure forecasts. The revenue forecasts that shall be used as the baseline for this discussion shall be the City's initial Five-Year Budget Forecast for 2007-08 (contained in CF# 07-0600-S43 Issued 8/9/07). If City revenue declines by 1% or more in the aggregate the parties will meet, using the mutual gains process, to identify the implications of the revenue loss, alternatives to address the loss and identify viable solutions within the control of the parties.

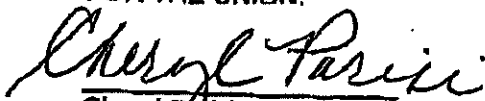
This letter of agreement does not confer the right to modify the terms and conditions of this MOU or to restrict the rights the parties have by law.

Economic Reopener

At the time the Controller closes the books on FY 2009-10, if the actual revenue collected for FY 2009-10 has increased by 3% over the revenue projection of 4.4% (as stated in the CAO's initial Five-Year Budget Forecast for 2007-08, issued 8/9/07), the parties will use the Mutual Gains process to discuss adjusting the 2.25% COLA upward effective 7/1/2010.

At the time the Controller closes the books on FY 2010-11, if the actual revenue collected for FY 2010-11 has increased by 3% over the revenue projection of 4.4% (as stated in the CAO's initial Five-Year Budget Forecast for 2007-08, issued 8/9/07), the parties will use the Mutual Gains process to discuss adjusting the 2.25% COLA upward effective 7/1/2011.

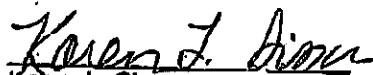
FOR THE UNION:



Cheryl Parisi
Executive Director
AFSCME District Council 26

12/10/07
Date

FOR THE CITY:



Karen L. Sisson
City Administrative Officer

12/10/07
Date