

CITY OF LOS ANGELES
BEFORE THE EMPLOYEE RELATIONS BOARD

DECISION NO. U-221

IN THE MATTER OF)	
)	
COALITION OF L.A. CITY UNIONS)	
)	
Claimants,)	UNFAIR EMPLOYEE RELATIONS
– and –)	
)	PRACTICE CLAIM NO. 1898-1904
CITY OF LOS ANGELES,)	
)	
Respondent.)	
_____)	
)	
Unlawful unilateral creation of new LACERS retirement)	
tier; whether application to new hires only a valid)	
defense.)	
_____)	

DECISION AND ORDER

Pursuant to a Notice of Hearing dated March 15, 2013, a hearing in the captioned matter was convened May 28-30, 2013 before Hearing Officer Luella E. Nelson to resolve a claim of unfair employee relations practice pursuant to §4.860 c, §4.810 f (4), §4.810 f (6), and §4.810 f (8) of the Los Angeles City Employee Relations Ordinance ("Ordinance"). The above-named parties had a full and adequate opportunity to present evidence, examine and cross-examine witnesses, argue orally, and file briefs.

On December 1, 2013, the hearing officer issued a Report and Recommendation opining that the instant claims had not been timely filed. Following the submission of exception by claimants and a rebuttal to such exceptions by Respondent, at its meeting of January 27, 2014, the Employee Relations Board ("Board") remanded the matter to hearing officer Nelson to clarify her rationale.

The hearing officer's Supplementary Report of March 12, 2014 was similarly briefed by the parties and, on May 19, 2014, was again considered by the Board. At the time a majority of the Board disagreed with the hearing officer and determined the claims to have been timely filed. The Board simultaneously remanded the cases to Ms. Nelson for a decision on the merits.

Following the submission of additional briefs by Claimant and Respondent on July 2, 2014, hearing officer Nelson filed her Second Supplementary Report on Remand. On July 9, 2014, Respondent filed exceptions to that July 2 report and on July 16 Claimant submitted a rebuttal to those exceptions.

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On July 28, 2014, the matter was again considered by the Board at which times it adopted the hearing officer's recommendations without modification, finding that Respondent had committed unfair employee relations practices in violation of the Ordinance. In summary, the Board agrees with Hearing Officer Nelson that contrary to Respondent's assertion, new hires are not the same as applicants for employment. As determined by the National Labor Relations Board in *Utility Vault* (2005) 345 NLRB 79, although employer policies affecting those not yet hired are outside the scope of mandatory bargaining (pre-employment drug tests in that case), policies impacting those already hired cannot be altered without the offering the Board – certified representative of the relevant bargaining unit an opportunity to meet and confer. Since respondent rejected Claimants' requests to meet and confer, agreeing merely to consultation, it violated the Ordinance as found by the hearing officer.

To remedy the violations of the Ordinance found above, the Board hereby adopts the following order:

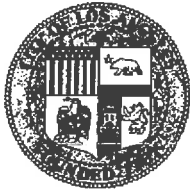
1. Respondent City of Los Angeles and its agents and representatives shall cease and desist from adding new tiers to the Los Angeles City Employees Retirement System (LACERS) or otherwise making changes to matters within the scope of representation under the Employee Relations Ordinance without first offering the employee organizations comprising the Coalition of L.A. City Unions an opportunity to meet and confer.
2. Respondent City of Los Angeles shall rescind Ordinance No. 182296 which created LACERS Tier II.
3. Respondents Department of Building & Safety and Office of the City Administrative Officer shall post, where copies of notices to employees represented by the employee organizations comprising the Coalition of L.A. City Unions are normally posted, a copy of this Order for no less than seven (7) days, and shall, within ten (10) days from the receipt of this Order, furnish the Employee Relations Board with a letter indicating the date and manner of compliance.
4. The above order is stayed pending appeal and final judgement before a court of competent jurisdiction.

BY ORDER OF THE BOARD.

A handwritten signature in black ink, appearing to read 'R. Douglas Collins', is written over a horizontal line.

R. DOUGLAS COLLINS, Chairman

DATED: August 25, 2014
Los Angeles, California



LOS ANGELES CITY EMPLOYEE RELATIONS BOARD

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

R. Douglas Collins
Chairman
Anthony Miller
Christopher Cameron
Rosalinda Lugo
Rhonda L. Hilyer

Robert R. Bergeson
Executive Director

ORDER

UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIM NOS. 1898-1904

Pursuant to §4.810 f (4) of the Los Angeles City Employee Relations Ordinance, having determined that a violation of §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 adding new tiers to the Los Angeles City Employees Retirement System (LACERS) or otherwise making changes to matters within the scope of representation under the Employee Relations Ordinance without first offering the employee organizations comprising the Coalition of L.A. City Unions an opportunity to meet and confer.
2. Respondent City of Los Angeles shall rescind Ordinance No. 182296 which created LACERS Tier II and shall place all affected employees hired on or after July 1, 2013 in LACERS Tier I retroactive to their date of hire.
3. Respondent City of Los Angeles shall post, where copies of notices to employees represented by the employee organizations comprising the Coalition of L.A. City Unions are normally posted, a copy of this Order for no less than seven (7) days, and shall, within ten (10) days from the receipt of this Order, furnish the Employee Relations Board with a letter indicating the date and manner of compliance.
4. The above order is stayed pending appeal and final judgement before a court of competent jurisdiction.

BY ORDER OF THE BOARD.

R. DOUGLAS COLLINS, Chairman

DATED: August 25, 2014
Los Angeles, California

