



# COALITION OF LA CITY UNIONS

## AFSCME DISTRICT COUNCIL 36

Local 741 – Recreation  
Assistants Unit

Local 901 – Recreation and  
Parks Professional Unit

Local 2006 – Professional  
Medical Unit

Local 2626 – Librarians' Guild

Local 3090 – LA City  
Clerical and Support Services  
Employees

Local 3672 – Executive  
Administrative Assistants

**International Union  
of Operating Engineers  
Local 501**

**Laborers' Local 777**

**LA/Orange Counties  
Building & Construction  
Trades Council**

**Service Employees  
International Union  
Local 721**

LAPMA – LA Professional  
Managers' Assn.

**Teamsters Local 911**

**CHERYL PARISI, Chair**

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March 3, 2016

Rules, Elections & Intergovernmental Relations Committee  
Los Angeles City Council  
200 North Spring Street, Room 340  
Los Angeles, California 90012

Re: Motion to Restructure DWP Governance

Dear Hon. Committee Members:

The Coalition of LA City Unions, representing nearly half of the civilian workforce including many hundreds in DWP, is strongly opposed to amendments to remove DWP from the Civil Service system, which is being proposed as part of a larger restructuring of the public utility. *The Civil Service system provides an open and transparent personnel system based fundamentally on the principles of merit and equal opportunity.*

While we could support certain proposals in the restructuring motion, such as a new full time governance structure in DWP, there is absolutely no reason to attack worker rights and Civil Service protections in the process.

### **Reversing the merit-based system:**

This proposal obstructs opportunity for City workers, rather than creates opportunity. The elimination of Civil Service in *any* City department would diminish merit-based hiring, seniority protections, career advancement, promotional opportunities, and other important worker rights in *every* City department.

It would also mean that any worker in DWP who has ever been employed in another City department – and there are many hundreds of these represented by our Coalition partners – would suddenly lose their long-held rights and access to fair pathways for career advancement.

The City of LA – with its progressive political base – should not be taking this path. The proposed elimination of the civil service system in DWP echoes the Tea Party's assaults on workers. Having eliminated public employee collective bargaining, Wisconsin Gov. Scott Walker notably just moved to destroy Civil Service protections in that state (see the *NY Times* editorial on his eradication of civil service, attached.)

### **Severing DWP from "One Los Angeles":**

Removal of the Civil Service system in DWP would disconnect DWP from the City of Los Angeles as a whole. As a proprietary department, DWP has standalone operations and budgeting. *But it is still integrated, as are LAWA and the Harbor, into*

*the employment fabric of the City.* Because this is the case, Civilian workers currently can (and do) transfer back and forth between DWP and other departments.

Case in point: Over 1,000 City workers transferred to DWP during the great recession, when faced with the prospect of layoff in other City departments; likewise, many DWP workers faced with a massive reorganization amid deregulation threats in the 90s transferred to other City departments.

In addition, the City invests a lot of time and money in training its employees – and worker retention is crucial for efficiency. Eliminating the civil service system would affect employee retention at precisely the moment the City is trying to cope with the graying of its workforce and achieving competitiveness and efficiency well into the 21<sup>st</sup> Century.

**Eroding transparency and public trust:**

The public deserves unfettered transparency and accountability in DWP and all City departments. Because the City's Civil Service system allocates jobs on the basis of merit and qualifications, instead of cronyism and connections, removing it would wipe out historic bulwarks of progressivism, good government and equal opportunity.

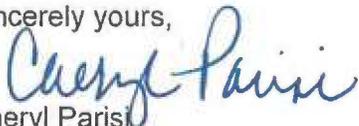
Similarly, Civil Service workers charged with discipline have their cases heard in a highly public, open and democratic way, with independent, third party oversight.

**Any personnel challenges must be addressed within the Civil Service system:**

Any claimed "inefficiencies" or personnel problems should be considered within the context of the civil service system. For example, our Coalition's recent agreement with the City that provides for the restoration of 5,000 City jobs takes on the workforce challenges of the 21<sup>st</sup> Century through deliberative and detailed secession planning. Included is a revamping of the City's traditional outreach and recruitment methodologies in order to assure that the City's future workforce reflects the celebrated demographic diversity of Los Angeles.

We urge you to preserve the civil service system in DWP and in every department – because the City of Los Angeles should always strive to be a model of government openness and transparency, including amid proposals for restructuring and reform.

Sincerely yours,



Cheryl Paris  
Executive Director, Coalition of LA City Unions

Cc: Hon. Eric Garcetti, Mayor  
Hon. Members of the Los Angeles City Council  
Hon. Ron Galperin, Controller  
Miguel Santana, Chief Administrative Officer  
Board of Civil Service Commissioners of the City of Los Angeles

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March 1, 2016

**By E-Mail & U.S. Mail**

Honorable Eric Garcetti, Mayor  
City of Los Angeles

Honorable Herb Wesson, Council President  
and Members of the Los Angeles City Council

Miguel Santana, Chief Administrative Officer

Board of Civil Service Commissioners  
of the City of Los Angeles

Re: Motion to Restructure DWP Governance

Dear Mayor Garcetti, Council President Wesson, Members of the City Council, CAO Santana,  
and Board of Civil Service Commissioners:

We write on behalf of the Coalition of Los Angeles City Unions ("Coalition") and its constituent unions, American Federation of State, County and Municipal Employees, District Council 36, Locals 741, 901, 2006, 2626, 3090, and 3672; Service Employees International Union, Local 721; International Union of Operating Engineers, Local 501; Laborers International Union of North America, Local 777; Los Angeles and Orange Counties Building and Construction Trades Council; and International Brotherhood of Teamsters, Local 911, concerning the Motion to develop and adopt Charter and Administrative Code amendments to restructure the governance system of the Los Angeles Department of Water and Power ("DWP").

Specifically, this letter addresses the inclusion in the Motion of amendments to remove DWP from the Civil Service system.

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### Meet and Confer Obligations

Amendments to the Charter or Administrative Code changing Civil Service protections and procedures are subject to meet and confer under the City's Employee Relations Ordinance ("ERO") and the Meyers-Milias-Brown Act ("MMBA"). Accordingly, the Coalition and each of its constituent unions demands that the City fulfill fully its duty to meet and confer over any decisions to amend the Charter and/or Administrative Code to change Civil Service protections and procedures *before* taking any action to propose amendments and, later, should any such decisions be implemented, over the impacts of such decisions. In addition, to the extent it has authority over subjects of meet-and-confer, the Coalition directs this demand to the Civil Service Commission.

Virtually all rank-and-file and most supervisory and management employees of the City enjoy Civil Service protection, under a "one Los Angeles" system. *See* Charter section 1000, which provides that the Civil Service provisions of the Charter apply to "all employees of the City," except for specific limited exemptions. *No* department of employees, including proprietary departments and the Police and Fire Departments, is exempt from Civil Service.

Specific to the DWP, Coalition member SEIU Local 721 currently represents a bargaining unit of security guards at DWP.

In addition, many DWP employees transferred or promoted from positions in other City departments. Many employees transfer or promote back and forth between the DWP and other City departments to further their City careers. In the past, when DWP downsized, DWP employees were absorbed into other City departments rather than losing their jobs. More recently, during the recession, hundreds of employees in City departments that downsized were absorbed by the DWP rather than losing their jobs.

Under the Charter, employees are entitled, among other rights, to promote within the classified civil service on the basis of ascertained merit (based on competitive examination) and seniority [Charter section 1009]; to status on a register of eligible candidates for promotion [section 1008], to a specific order of suspension (layoff) and restoration where a position is lost because of lack of work or funds, abolishment of the position, or for other reasons not caused by personal delinquency [section 1015(a)]; to displace (bump) in a such a suspension (layoff) [section 1015(b)]; and to procedures on discharge or suspension for cause [section 1016]. These rights are further spelled out in provisions of the Administrative Code and Rules of the Board of Civil Service Commissioners. Removing some 10,000 DWP employees, including Coalition-represented employees, from this Civil Service system will clearly affect both their rights and the rights of those employees left in the system.

A charter city is required to meet and confer with representatives of its employees *before it proposes charter amendments* which affect matters within the scope of representation. *People*

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*ex rel. Seal Beach Police Officers Ass'n. v. City of Seal Beach* (1984) 36 Cal.3d 591, 601. As discussed above, the civil service provisions of the Charter and Administrative Code affect matters within the scope of representation of employees represented by Coalition unions who work at the DWP and who work throughout the City and have rights to positions at the DWP, as well as the current employment employees at the DWP who came from or have rights to transfer, promote, return, or bump to positions in other City departments.

A public employer has a duty to meet and confer over amendments to civil service rules. *Los Angeles County Civil Service Comm. v. Superior Court* (1978) 23 Cal.3d 55. Local governments with civil service systems are not exempt from the meet-and-confer requirement, and meet-and-confer “does not . . . offend the home-rule provisions of the California Constitution.” *Id.* at 58. See also *Int'l. Ass'n. of Fire Fighters, Local 1974 v. City of Pleasanton* (1976) 56 Cal.App.3d 959, 970-71, 976 (holding that City Council legislative amendment of personnel rules related to announcement of civil service examinations was subject to meet and confer before enactment and that amendment adding additional exemptions was also within scope of representation and subject to meet and confer).

Based on the above, the Coalition unions demand that the City fulfill its meet-and-confer obligations.

The Coalition is aware that International Brotherhood of Electrical Workers (IBEW), Local 18, which represents most of the employees at DWP has requested that the City meet and confer over the Civil Service aspects of the Motion. It is the Coalition’s position that meaningful meet-and-confer cannot occur separately. The Coalition has the right, at the very least, under ERO and MMBA requirements that the City meet and confer in good faith, to be kept fully informed about the City/IBEW Local 18 meet-and-confer process.

#### Undermining the Civil Service Mandate

It goes without saying that governance of the DWP can be restructured without the civil service piece of the Motion – the removal of one-quarter of the City’s civil service workforce from the civil service system.

Civil Service systems fulfill two important objectives – to eliminate the “spoils system” in awarding government jobs and to encourage faithful, honest, and efficient service by ensuring that appointment and promotion are awarded on the basis of merit, measured by competitive examination. *Los Angeles County Employees Ass'n., SEIU Local 660 v. Superior Court* (2000) 81 Cal.App.4<sup>th</sup> 164, 169.

California law embodies a strong constitutional protection of civil service systems which “emanates from an implicit necessity for protecting the policy of the organic civil service mandate against dissolution and destruction.” *California State Employees' Assn. v. State of*

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*California* (1988) 199 Cal.App.3d 840, 844 [citation omitted]. This longstanding principle, called the “civil service mandate,” forbids private contracting where persons selected through the civil service system could perform the work adequately and competently. *State Compensation Ins. Fund v. Riley* (1937) 9 Cal.2d 126, 135. In *Professional Engineers in California Government v. Department of Transportation* (1997) 15 Cal.4<sup>th</sup> 543, 565, the California Supreme Court invalidated a state statute allowing the Department of Transportation flexibility to contract out, relying on *Riley* and applying the civil service mandate principle. In doing so, the Court found support in the California Constitution Revision Commission’s rejection of civil service provisions that would authorize creation of broad exemptions from civil service.

In *Los Angeles County Employees Assn. (LACEA), SEIU Local 660 v. Superior Court* (2000) 81 Cal.App.4<sup>th</sup> 164, 175, the court rejected an attempt by Municipal Court judges to mandate that newly hired court clerks and existing deputy court clerks who promote be exempt from civil service. The court rejected the judges’ claim that denying civil service protection to newly hired and promoted clerks would conserve resources and streamline unification of the superior and municipal courts, holding that it ran afoul of mandatory nature of civil service rules. The court stated that the judges’ argument, carried to its logical conclusion, would allow all public employers to condition future employment on a waiver of civil service status, bringing an end to the entire system. See also *Holmgren v. County of Los Angeles* (2008) 159 Cal.App.4<sup>th</sup> 593, 605, review denied, which cites *LACEA* for the proposition that it held “that the judges had no power to deny civil service status to any county employee.”

The proposed wholesale exemption of DWP from Civil Service violates the civil service mandate principle. If broad authorization of contracting out undermines civil service (Los Angeles Charter section 1022 narrowly limits contracting out to work that can be performed more economically or feasibly by independent contractors than by City employees), then surely exempting approximately one quarter of the civil service workforce subverts the entire system. Although the Motion – which has no specifics – cites an inability to hire quickly, there is no claim that the current DWP workforce does not perform DWP work efficiently, as the civil service rules seek to ensure. There is no basis to violate the civil service mandate as to existing City employees.

### Vested Property Rights

Current law holds that individual employees have certain vested property rights created by the Civil Service system which cannot be negotiated away.

Separate from the Coalition unions’ meet-and-confer rights, property rights created by a civil service system inure to the benefit of individual employees. *Los Angeles Police Protective League v. City of Los Angeles* (2002) 102 Cal.App.4<sup>th</sup>, 85, 93-94 (holding that City police officers hold a property interest in the appeal process for challenge to punitive reduction in pay grade or involuntary reassignment); *Brown v. City of Los Angeles* (2002) 102 Cal.App.4<sup>th</sup> 155,

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169-170 (holding that police officers have property interest in advanced pay grade in reassignment to lower pay grade within same classification, where conditions for reassignment in department manual were not met); *Alexander v. City of Menlo Park* (9<sup>th</sup> Cir. 1986) 787 F.2d 1371, 1374 (bumping rights to particular positions under city rules held to be constitutionally protected property interest).

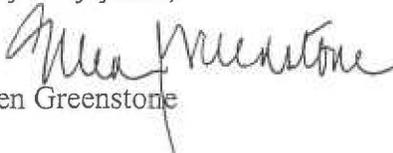
“A statute, rule or regulation may create an entitlement to a governmental benefit either if it sets out conditions under which the benefit must be granted or if it sets out the only conditions under which the benefit may be denied.” *Brown, supra*, 102 Cal.App.4<sup>th</sup> at 170. The Civil Service provisions of the Charter, Administrative Code, and Civil Service Rules set out such conditions.

Other courts have described these property interests as vested benefits, like pension benefits. In *California League of City Employee Ass'ns. v. Palos Verdes Library Dist.* (1978) 87 Cal.App.3d 135, 140-41, the Court held that the principle of vested benefits giving rise to a constitutionally protected contract interest was not limited to pension cases and that a fifth week of vacation and a right to take sabbatical leave, abrogated in library board-adopted personnel policies, were vested benefits which could not be impaired without granting comparable new advantages. The Court cited with approval, among other cases, *Ivens v. Simon* (1963) 212 Cal.App.2d 177, 182, which held that a city's classification plan of five steps, with each higher step available after a certain period of time in class, constituted part of the contract of employment and was thereby vested. See also *Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4<sup>th</sup> 1598, 1606 (vesting principle not limited to pension cases); *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4<sup>th</sup> 1171, 1190 (citing *California League* with approval).

Thus, to the extent that civil service benefits vest under these legal authorities, the benefits belong to individual City employees and cannot be negotiated or legislated away.

The Coalition will appreciate your careful attention to its concerns, as expressed in this letter. Thank you.

Very truly yours,

  
Ellen Greenstone

EG/jc

cc: Mike Feuer, Los Angeles City Attorney  
Coalition



**The New York Times** | <http://nyti.ms/1oSyvZU>

SundayReview | EDITORIAL

# Gov. Walker Resumes His War on Workers

By **THE EDITORIAL BOARD** FEB. 20, 2016

What's a politician to do after his ballyhooed campaign for the Republican presidential nomination flames out before the first vote is cast? In the case of Gov. Scott Walker of Wisconsin, it means returning home to the anti-labor obsession that got him noticed in the first place — and signing into law, less than two weeks ago, a “reform” plan that promises to gut much of the state’s historic Civil Service system.

Gone are objective Civil Service examinations; instead, as of July, hiring for state jobs will be based on résumés and the impressions they leave on administrators perusing them. Gone, too, is seniority as a bulwark for job protection; administrators will now be able to do layoffs based on subjective evaluations of a worker’s job performance.

New hires who had six months’ probation will now be under a two-year watch in which to please their masters. And should anyone wonder where the power lies in this “streamlined” system, the law centralizes hiring decisions firmly in the governor’s administrative office, with a new system of merit

bonuses at the ready.

Patronage, anyone? Mr. Walker hailed the changes as “common sense” efforts to “get the best and brightest in the door and keep them there.” He did not mention energetic toadying as a possible qualification, nor the political cronyism the law so obviously invites.

Wisconsin citizens thought they had abandoned the spoils system and patronage corruption a century ago when Civil Service was championed by Gov. Robert La Follette, the historic progressive who eloquently railed against the very abuses now being resurrected in the Wisconsin statehouse. Here it comes again.

Mr. Walker became a national sensation among conservatives five years ago when he stripped almost all public workers of their collective bargaining rights while using the state budget to eliminate the requirement in force in local communities to pay the prevailing wage to workers on government projects. Back then, he denied having any designs on the Civil Service system. But that changed once he returned from his failed presidential venture and found the Republican Legislature’s retrograde employment measure awaiting his signature.

The governor’s presidential hopes lasted only two months after weak debate performances among the pack of 17 candidates. He may be remembered most for failing to convince people that his anti-labor toughness in surviving a recall vote in Wisconsin was somehow a foreign policy credential for standing up to Islamic terrorists. “If I can take on 100,000 protesters, I can do the same across the world,” he insisted.

The patronage-friendly measure Mr. Walker signed in the name of better government is no more convincing than his presidential campaign. It undermines the welfare not only of the state’s 30,000 workers but of Wisconsin citizens who are losing an important part of their heritage of government fairness.