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March 25, 2016

TO: Supervisor Hilda L. Solis, Chair
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Supervisor Don Knabe
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FROM: Lori Glasgow 
Executive Officer

SUBJECT: **AMENDMENT TO THE HEARING OFFICER AGREEMENTS FOR THE
EMPLOYEE RELATIONS COMMISSION
(ITEM NO. 13, AGENDA OF MARCH 29, 2016)**

Background

On March 15, 2016, the Los Angeles County Board of Supervisors ("Board") passed a motion directing the Executive Officer of the Board to work with the Executive Director of the Civil Service Commission ("Commission" or "CSC") to review the current daily-rates for hearing officers presiding over Commission hearings. In addition, the motion also asked for an analysis of whether Commissioners could be compensated for time spent reviewing the records of a case in addition to the report from the hearing officer.

The Commission is a quasi-judicial appellate body for classified employees who have been disciplined, discharged, demoted, or suspended in excess of five days. The Commission has jurisdiction regarding allegations of discrimination in the imposition of discipline or the treatment of persons seeking employment in the classified service of the County. The Commission also hears employment examination appeals.

The Commission meets generally every Wednesday to rule on petitions for hearings filed by classified employees and those seeking employment with the County. Pursuant to the Los Angeles County Civil Service Rules (CSRs), as adopted by the Board of Supervisors, an employee who is the subject of discipline in excess of 5 days' suspension is entitled to a hearing as a right. The Commission has discretion in granting hearings on employment examination appeals.

When the Commission grants a hearing, the case is assigned to one of the CSC's hearing officers. The hearing officers serve as the "triers of fact" and preside over the evidentiary hearings. Parties to hearings have the opportunity to present, subpoena, and cross-examine witnesses. In disciplinary matters, the CSRs provide that the burden of proof is on the Department, and in all other cases the burden of proof is on the petitioner. Subsequent to the close of hearings, the hearing officers submit reports and recommendations for the Commission's consideration. Hearing officers' reports must include findings of fact and conclusions of law. If the Commission adopts a hearing officer's recommendation, any party aggrieved by the proposed decision may file objections.

After all parties have been provided an opportunity to submit objections and present them orally at the CSC's regular meeting, the CSC renders its final decision. However, if after reviewing the filed objections the Commission wants to reject any of a hearing officer's findings, the Commissioners may vote to read the evidentiary record including transcripts of the hearing or preside over a new hearing themselves. After completion of a new hearing or the review of the evidentiary record, the Commission renders a final decision.

Review of Hearing Officer Daily Rates

The current contract for hearing officer services, which was executed in 2011, provides for an hourly rate for presiding at hearings of \$112.50, which is up to \$900.00 per day. Depending on the number of days of hearing, the contract has a range of compensation for report writing after completion of the evidentiary hearing. A hearing officer may be paid between \$900 - \$5,400, depending on how long it takes to write the report. As an example, for a 1 day hearing, the maximum compensation would be \$2,250.

In response to the Board's directive to review hearing officer compensation, the Commission's staff surveyed a number of surrounding jurisdictions regarding how they compensate individuals presiding over their evidentiary hearings. Following is a summary of the responses received:

Los Angeles City – The City currently pays a maximum of \$900 per day to preside over a hearing and a flat \$900 for post-hearing report writing. This amounts to a maximum compensation of \$1,800 for a 1 day hearing. The City has approximately 105 hearings granted per year.

San Bernardino County – The County currently compensates hearing officers a maximum of \$1,200 per day for presiding at a hearing and an additional \$1,200 per day for report writing. However, anything more than 1 day of report writing must be approved in advance. For a 1 day hearing, the total compensation

would be \$2,400. The county is currently soliciting hearing officers and the new rate for presiding at hearing and writing the post-hearing report is \$1,500 per day. The county averages 27 granted hearings a year.

San Diego County – The County does not use hearing officers. The commissioners preside at a hearing in this county. The presiding commissioner gets \$100 for a full-day hearing, and \$50 for half-day hearing.

Kern County – The County has only had about 3 cases in the last 8-9 years. Hearing officers are compensated at a maximum rate of \$1,850 per day for presiding at a hearing and the same daily rate for writing the post-hearing report. Thus, the maximum compensation in this county for a 1 day hearing is \$3,700.

Santa Barbara County – The County compensates the hearing officers at an hourly rate of \$160 per hour for all hearing related work, *e.g.*, presiding at hearing, writing the post-hearing report, attending commission meetings etc. The county has a current solicitation for candidates to serve as hearing officers. The compensation in the new solicitation is at a rate of up to \$325/hour, depending on qualifications. The county has granted hearings in no more than 12 matters in the last 3 fiscal years.

Los Angeles County currently contracts with 39 individuals to perform hearing officer services for the Commission. The Commission grants hearings in approximately 250 matters per year, which equates to a little more than 6 matters per hearing officer, with the average number of hearing days per case of 3 days. Therefore, for an average case, the hearing officer will receive \$5,850 when the hearing rate is added to the compensation for report writing.

Commissioner Compensation for Reading an Evidentiary Record

Per County Ordinance 6.44.160, a commissioner cannot receive more than \$150 per day with an annual maximum of 65 days (a total of \$9750 per year). The ordinance does not allow for any additional compensation and specifically prohibits such compensation for "service as a hearing officer, for service on a hearing board, or for preparing a written report based on such hearing". Therefore, compensating the Commissioners for reviewing the evidentiary record will require an ordinance amendment and further legal analysis.

The Commissioners spend many hours preparing for, and participating in, the Commission's weekly meeting. Increasing their overall compensation would recognize the large amount of work they perform, while not directly tying any specific outcome to more compensation.

The Commission staff surveyed several jurisdictions regarding how their Civil Service Commissioners are compensated. The results follow:

Los Angeles City – commissioners are not compensated.

San Bernardino County – commissioners are not compensated

San Diego County – commissioner receive \$100 for a full day; \$50 for a half a day.

Kern County – commissioners receive \$75 per meeting with a monthly maximum of \$900.

Santa Barbara County – commissioners receive \$100 per meeting.

Differences Between ERCOM and the Civil Service Commission

When the Meyer-Millias-Brown Act governing City, County and Special District labor relations was passed in 1969, there were only two jurisdictions exempted from the statute - Los Angeles County and Los Angeles City. All other public sector jurisdictions in California are subject to the Public Employment Relations Board (PERB), headquartered in Sacramento. This includes cities, counties, trial courts, special districts, K-12 school districts, community colleges, the University of California system, and state employees. This statutory context demonstrates the fundamental differences between ERCOM, which is an exemption from State Labor Law, and the CSC, which is established by County Charter and deals with individual employment issues.

An average ERCOM agenda will have 75 -150 separate matters for consideration, and each matter could impact hundreds or even thousands of employees. Commissioners are paid \$200 per hour up to a maximum of \$4000 a month. The compensation is to ensure that each Commissioner is fully informed on a breadth of reports and documents necessary to render a decision. The Civil Service Commission's weekly agenda averages 25 separate matters.

The main difference between matters before the Civil Service Commission and the Employee Relations Commission is the breadth of the decisions. Civil Service Commission hearing officers are dealing with employment law issues impacting a single employee. There is a relatively large pool of individuals and lawyers who have subject matter familiarity with these types of cases. ERCOM hearing officers deal with public sector labor relations and have different subject matter expertise.

They preside over issues such as the following:

- Determination of appropriate bargaining units of employees
- Certification or decertification elections over who represents a unit
- Unfair labor charges by management over actions taken by a union
- Unfair labor charges by unions over actions taken by management
- Declaring a bargaining impasse
- Appointment of a fact-finder after an impasse is declared

Conclusion

In general, the criteria for modifying a compensation rate structure for hearing officers has to do with whether there are recruitment or retention issues. In the instance of CSC hearing officers, there have been no reports that the Commission is unable to recruit a sufficient pool of qualified hearing officers.

The current hearing officer's agreements for the CSC will expire July 25, 2016, with additional monthly extensions up to six months. Therefore, if there is interest, the Executive Office will examine the concept of special subject matter expertise for particular types of cases, such as Sheriff's Department or Department of Children and Family Services cases, rates of compensation for hearing officers as well as the Civil Service Commissioners, with a report back in August, 2016. This will allow sufficient time for a robust discussion of fiscal, legal and policy implications as we prepare the next 3 - 5 year Master Agreement for Commission hearing officers prior to the expiration of the current agreements.

If you have any questions or require additional information, please contact Larry Crocker, Executive Director of the Civil Service Commission at (213) 974-2411 or lcrocker@bos.lacounty.gov or Tony Butka, Interim Executive Director of the ERCOM at (323) 791-7367.

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c: Larry Crocker
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