

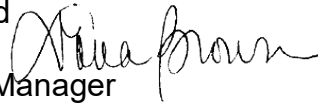
CITY OF LOS ANGELES

INTER-DEPARTMENTAL CORRESPONDENCE

Date: October 6, 2023

To: Najeeb Khoury, Executive Director
Employee Relations Board

From: Dana H. Brown, General Manager
Personnel Department



Subject: ACCRETION PETITION C990 – COUNCIL AIDE I, CLASS CODE 0180; COUNCIL AIDE II, CLASS CODE 0181; COUNCIL AIDE III, CLASS CODE 0182; COUNCIL AIDE IV, CLASS CODE 0183; COUNCIL AIDE V, CLASS CODE 0184; COUNCIL AIDE VI, CLASS CODE 0185; and COUNCIL AIDE VII, CLASS CODE 0186

On Monday, June 26, 2023, the Employee Relations Board posted Petition C990 requesting the accretion of the following classifications by the Engineers and Architects' Association (EAA), into the Administrative Unit (MOU 1).

- Council Aide I, Class Code 0180
- Council Aide II, Class Code 0181
- Council Aide III, Class Code 0182
- Council Aide IV, Class Code 0183
- Council Aide V, Class Code 0184
- Council Aide VI, Class Code 0185
- Council Aide VII, Class Code 0186

Unit Description

The Administrative Unit was established in 1972, in E.R.B. No. 4, to consist of non-supervisory classes that normally require a four year college degree and perform administrative duties. Examples of duties normally considered to be administrative in the City include analytical duties related to budget and financial administration, grants administration, personnel administration, accounting and auditing, systems support and maintenance, workers compensation administration, purchasing of commodities and services, public relations, and administration of specialized Citywide or departmental programs such as coordination of the Citywide recycling program or resolving landlord/tenant issues related to the rent control ordinance. Some positions in the unit function as full supervisors but the classes in the unit are not ordinarily considered to be supervisory classes. The unit consists primarily of classes that are either considered paraprofessional or require at least a four-year college degree. Examples of the classes in the unit include Management Analyst, Accountant, Systems Analyst, and Management Aide. The classes in the unit that do not meet either the paraprofessional or degree requirement criteria include: Background Investigator, which performs professional background investigations of Police Officer and Firefighter candidates and requires a background in employment in law enforcement to perform the work; Community Services Representative which assists departments in developing and presenting community promotional programs for activities such as library or

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recreational programs, and requires a background in promoting the services of a City department; and Program Aide which performs some clerical duties such as answering questions for the public about City departmental programs and record keeping but also may monitor and coordinate such programs, and requires a background that varies with the specific needs of the program. The lowest annual salary in the Administrative Unit is \$51,803 for Administrative Intern, and the highest annual salary is \$172,113 for Senior Controller Audit Analyst III.

Duties of Classifications Petitioned for Accretion

There are no clearly established duties for any of the Council Aide classes.

Minimum Requirements of Classifications Petitioned for Accretion

There are no clearly established minimum requirements for any of the Council Aide classes.

Discussion

Section 4.822 of the *Employee Relations Ordinance* consists of several criteria for the determination of appropriate bargaining units. There is no criteria we believe to be relevant to this petition.

The City classifications that are represented in the Administrative Unit (MOU 1) have minimum requirements and defined job duties while Council Aide does not have established requirements or defined job duties by which to evaluate the appropriateness of the accretion petition. Likewise other current unit members are assigned a regular place of work, regular work hours, and receive pay for overtime. Council Aides are assigned as the Council Member deems fit, work where the Council Member deems appropriate, work the hours required by the Council Member, and are exempt from the Fair Labor Standards Act and are not paid for overtime. Finally, full-time City classifications in this unit are career positions while Council Aides often end their City employment with the end of the term of the Council Member. Attempting to merge Council Aide into the Administrative Unit would raise a host of issues, long resolved for other represented classifications in the unit.

Recommendation

Based on the criteria set forth in Section 4.822 of the *Employee Relations Ordinance*, the Personnel Department, in concurrence with the CAO, finds that the above-mentioned classes are not appropriate for accretion.

c: Patricia A. Jimenez, City Clerk
Marleen Fonseca, EAA
CAO ERD Analysts

CITY OF LOS ANGELES

INTER-DEPARTMENTAL CORRESPONDENCE

Date: October 6, 2023

To: Najeeb Khoury, Executive Director
Employee Relations Board

From: Dana H. Brown, General Manager
Personnel Department



Subject: ACCRETION PETITION C989 – COUNCIL AIDE I, CLASS CODE 0180; COUNCIL AIDE II, CLASS CODE 0181; COUNCIL AIDE III, CLASS CODE 0182; COUNCIL AIDE IV, CLASS CODE 0183; COUNCIL AIDE V, CLASS CODE 0184; COUNCIL AIDE VI, CLASS CODE 0185; and COUNCIL AIDE VII, CLASS CODE 0186

On Monday, June 26, 2023, the Employee Relations Board posted Petition C990 requesting the accretion of the following classifications by the Engineers and Architects' Association (EAA), into the Supervisory Administrative Unit (MOU 20).

- Council Aide I, Class Code 0180
- Council Aide II, Class Code 0181
- Council Aide III, Class Code 0182
- Council Aide IV, Class Code 0183
- Council Aide V, Class Code 0184
- Council Aide VI, Class Code 0185
- Council Aide VII, Class Code 0186

Unit Description

The Supervisory Administrative Unit was established to consist of supervisory classes for office workers. The unit was originally called the Supervisory White Collar Unit. The unit primarily consists of classes that supervise classes that are in the Clerical Unit and Administrative Unit of the City. Examples of duties normally supervised by members of this unit include clerical and payroll processing functions; recreational activities; and analytical duties related to budget and financial administration, grants administration, personnel administration, accounting and auditing, systems support and maintenance, workers compensation administration, purchasing of commodities and services, public relations, and administration of specialized City wide or departmental programs such as coordination of the City wide recycling program or resolving landlord/tenant issues related to the rent control ordinance. Most of the non-clerical classes in the unit require a four-year college degree at the entry level. Examples of the classes in the unit include Senior Management Analyst, Senior and Principal Accountant, Senior Systems Analyst, and Principal and Chief Clerk. The lowest annual salary in the Supervisory Administrative Unit is \$75,669 for Senior Traffic Checker, and the highest annual salary is \$181,509 for Senior Benefits Analyst II.

Duties of Classifications Petitioned for Accretion

There are no clearly established duties for any of the Council Aide classes.

Minimum Requirements of Classifications Petitioned for Accretion

There are no clearly established minimum requirements for any of the Council Aide classes.

Discussion

Section 4.822 of the *Employee Relations Ordinance* consists of several criteria for the determination of appropriate bargaining units. There is no criteria we believe to be relevant to this petition.

The City classifications that are represented in the Supervisory Administrative Unit (MOU 20) have minimum requirements and defined job duties while Council Aide does not have established requirements or defined job duties by which to evaluate the appropriateness of the accretion petition. Likewise other current unit members are assigned a regular place of work, regular work hours, and receive pay for overtime. Council Aides are assigned as the Council Member deems fit, work where the Council Member deems appropriate, work the hours required by the Council Member, and are exempt from the Fair Labor Standards Act and are not paid for overtime. Finally, full-time City classifications in this unit are career positions while Council Aides often end their City employment with the end of the term of the Council Member. Attempting to merge Council Aide into the Supervisory Administrative Unit would raise a host of issues, long resolved for other represented classifications in the unit.

Recommendation

Based on the criteria set forth in Section 4.822 of the *Employee Relations Ordinance*, the Personnel Department, in concurrence with the CAO, finds that the above-mentioned classes are not appropriate for accretion.

c: Patricia A. Jimenez, City Clerk
Marleen Fonseca, EAA
CAO ERD Analysts

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November 2, 2023

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VIA E-MAIL AND U.S. MAIL

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Re: **Engineers and Architects Association's Accretion Petitions No. C989 and C990**

Dear Mr. Khoury:

The undersigned writes on behalf of the Engineers and Architects' Association ("EAA") to express EAA's strong disagreement with the reports of the Personnel Department submitted on October 6, 2023 regarding EAA's Accretion Petitions numbered C989 and C990 ("Reports").

The Reports are conclusory and misleading, and if adopted would deny Council Aides their right under Section 4.857 of the Employee Relations Ordinance ("ERO") to join the employee organization of their choosing. The Employment Relations Board ("ERB") should reject the conclusion of the Reports, and permit the accretion petitions to proceed. As discussed further below, there is ample basis for it to do so. The only issue on which further clarification might prove useful is that of whether all of the Council Aides should be accreted into one existing unit, or whether they should be split between the Administrative and Supervisory Administrative units represented by EAA. Either way, given that extended delay of the Council Aides' right to be represented by the EAA amounts in practical terms to a denial of that right during the delay, the ERB should move with all speed to ensure that Council Aides' rights to representation are advanced and protected.

The Reports Should Be Rejected

The first fundamental problem with the Reports is that, rather than engaging in thoughtful analysis of the relevant factors for determining the appropriateness of the petitioned-for

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bargaining units,¹ they dodge the responsibility to do so almost entirely. Specifically, the Reports indicated that the Personnel Department was not able “to evaluate the appropriateness of the accretion petition.” The Reports claim that this is result of a purported lack of “established requirements or defined job duties” for Council Aides, but even to the extent that is true, it does not absolve the Personnel Department of its responsibility for performing the evaluation the ERO requires. The Reports nevertheless needed to engage with and evaluate the ways in which, absence of formal job descriptions in some cases notwithstanding, Council Aides do *in fact* share a community of interest with other employees in the units. Ultimately, the issue of minimum requirements and job duties might be relevant to the fourth factor of the unit appropriateness analysis, but it is *actual* requirements and duties that matter, and not whether or how they are formally “established” or “defined.” The Reports’ failures to engage with Council Aides’ actual job duties and requirements renders them deficient.

Similarly, the other issues that the Reports describe with respect to time and place of work, eligibility for overtime, and term of employment may be similarly relevant to the first and fourth factors, but are hardly dispositive without more. There are other facts that must be considered within each of these factors, and there are several other factors that the Reports fail to address in any way. Notably, the Reports fail to engage in any way with the second, third, fifth, sixth, and seventh factors from the ERO. The Reports’ failure to engage substantively with these issues renders them deficient.²

The Reports also note that allowing the EAA to represent Council Aides as a part of the petitioned-for units “would raise a host of issues, long resolved for the other represented classifications in the unit[s].” This is not a reason to deny the accretions, however. Any time a

¹ These factors are set forth in Section 4.822 of the ERO as follows:

- (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.

² The conclusory statement that “[t]here is no criteria we believe to be relevant to this petition” is facially insufficient. The factors in Section 4.822 may not simply be ignored.

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previously unrepresented classification seeks to be represented, that will inevitably raise “a host of issues,” inasmuch as the terms and conditions of work for that classification will become subject to collective bargaining. But honoring the rights of employees to organize and be represented requires addressing those issues, and not attempting to avoid them as the Reports suggest.³ Here, the fact that these issues *have* been resolved for other represented classifications in the petitioned-for units indicates that they will also be susceptible to successful resolution for Council Aides.

In sum, the Reports are woefully one-sided and incomplete, and should be rejected on that basis.

Next, the Reports also contain inaccuracies regarding the Council Aides, that must be corrected. First, the Reports state that Council Aides do not have specified job duties or requirements, but this is misleading. Although their job duties are not contained on the Personnel Department’s website under “class specifications,” they do exist, and like many other classifications that EAA represents (such as, for example, all those at the City Attorney’s Office), they exist outside of the Personnel Department website.⁴ The Reports are also misleading to the extent that they suggest most EAA positions require college degrees, whereas Council Aides do not. In fact, there are many EAA represented classifications that do not require a degree, and have similar requirements, and perform work similar to Council Aide duties.⁵

Further, some of the current EAA represented classifications are, like Council Aides, exempt from civil service. Many of these are classifications assigned to the City Attorney’s Office. Additionally, some EAA represented classifications are, like Council Aides, not paid for overtime.

The foregoing inaccuracies provide an additional reason why the Reports should be rejected.

³ Indeed, the tone of the Reports suggests that, because Council Aides have not benefitted from having been represented in terms of their employment in the past, they cannot now be accreted into a unit so that EAA can represent them. Such a conclusion would be discriminatory against these employees on the basis of the fact that they are seeking representation after having not been represented in the past, and it would violate their right under the ERO to be represented by the representative of their choosing.

⁴ Some 26 classifications that EAA represents under MOU 1 do not have classification specifications with requirements and duties detailed on the Personnel Department’s website.

⁵ In fact, some Council Aide positions require higher education and/or experience usually obtained by having a degree or equivalent relevant experience.

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The Petitioned-For Units Are Appropriate

When the record is corrected, it is also apparent that there are numerous similarities between Council Aides and other classifications that are already represented in the petitioned-for units. This indicates that the petitioned-for units would be appropriate under the factors in the ERO. For example, Council Aides perform duties and rely on work skills that are relevant to the qualifications needed to fill other EAA represented positions. Indeed, it is not unusual for employees in classifications represented by EAA to transfer into Council Aide positions, or for Council Aides to transfer back into EAA represented positions at the end of their tenure. These overlaps indicate the appropriateness of accretion.

One factor of particular importance, which the Reports neglected entirely, is the third: “The effect of the unit on the efficient operation of the City and sound employee relations.” Allowing Council Aides to accrete into either or both of the existing bargaining units represented by EAA⁶ would meaningfully advance the goal of improving employee relations, while avoiding any of the inefficiencies that could result from the creation of one or more new bargaining units for Council Aides. This factor also weighs strongly in favor of permitting the petitioned-for accretions to move forwards.

As mentioned above, further clarification may be useful for purposes of determining whether all Council Aides should be accreted into one of the existing EAA bargaining units, or whether the classes should be split between the Administrative and Supervisory Administrative bargaining units. That issue could be resolved through negotiation pursuant to Rule 5.01 of the ERB’s Regulations, or through a hearing under Rule 6.01 *et seq.* Either way, however, given that Council Aides have already endured substantial delays in the resolution of the petitions, the ERB should move with all speed to ensure that the petitions are permitted to proceed as quickly as possible.

Conclusion

It would violate the purposes of the ERO and the rights of Council Aides and the EAA if the ERB were to dismiss the EAA’s accretion petitions C989 and C990 on the basis of the one-sided and incomplete Reports. Council Aides have waited long enough for representation. The Reports should be rejected, and the ERB should permit the petitions to proceed.

⁶ The Reports should have, but failed to, address the possibility that it would be appropriate for some Council Aides to accrete into EAA’s existing Administrative Unit, with others accreting into the Supervisory Administrative Unit.

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The EAA reserves its right to present additional arguments at the appropriate time before the ERB takes action on its petitions pursuant to Rule 3.04.

Thank you for your time and attention to this matter.

Very truly yours,

Bush Gottlieb
A Law Corporation



Michael E. Plank

cc: Marleen Fonseca