

Newsletter from the EA Board

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## BAAQMD EMPLOYEES' ASSOCIATION

### Message from the President

Dear Members,

This is a busy time for the EA to work on overdrive to protect our members and to make sure the Air District follows the MOU. Issues were raised regarding the FLSA (Federal Labor Standards Act) exemption designation for the District Engineers in the Koff Classification study. We are providing you with information to ensure that you make an educated choice when voting on the Board (EA and BAAQMD Board of Directors) approved revised job specifications on March 6<sup>th</sup>. We will be sending out an email on March 6<sup>th</sup> for the vote and we will be ending the vote on March 7<sup>th</sup> at 6 pm.

I am going to start a new section called "The Rumor Mill". Rumors have a way of spreading around this place and while they can be based off some truth, usually when we investigate, we usually find there has been some type of miscommunication or misunderstanding. See "Rumor Mill" below.

Clarification about the EA Voice. This newsletter is for you. It is our way to get out information to members. It is also a platform for members to communicate with each other. If you have an article, opinion, alternative view, or suggestion that you would like to see published in the EA Voice, please contact us at

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a personal attack, inappropriate or vindictive.

Finally, we will be having our next General Membership meeting March 6th. We will be conducting an online Survey Monkey vote starting after the meeting on March 6th and closing March 7th at 6pm. Please contact me if you do not get this email (eapresident2015@gmail.com).

I'd like to thank our members who have been vigilant and letting us know when an issue arises. It is our duty to serve and a privilege to represent you.

Thank you.

— Chris Coelho, EA President  
eapresident2015@gmail.com

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## General Membership Meeting March 6th

Our next EA general membership meeting will take place Monday March 6th at noon in the Yerba Buena and Ohlone rooms. We will update members on current board activities. Lunch will be provided and the meeting will be simulcast for field staff and members who cannot attend.

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## Classification Study Vote March 6th & 7th

We will be conducting an online vote on the Koff and Associates classification study of Engineers, Inspectors and Administrative Analyst Series beginning after the General Membership Meeting. This is a change to the MOU and will require a general membership vote to approve. The classification series can be found on our website [here](#). The vote will take place online March 6th and 7th. Please look for an email from Survey Monkey on March 6th by 4 pm.

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## Classification Study Clarification

In early 2015, the Air District and the EA mutually agreed to begin a classification study as stated in the MOU. The EA proposed the Administrative Analyst, Inspector and Engineering classes. The District accepted these three classes and the two parties began looking for a contractor to conduct the study.

Starting on March 3, 2015, the EA Meet and Confer team worked with the Air District on classification studies with Koff & Associates. During this time, several members in the Administrative Analyst, Inspector and Engineering classes filled out questioners about their job duties and Koff & Associates also conducted interviews with members in these classes.

Starting about February 2016, the EA solicited from the affected staff comments to the draft updates proposed by Koff & Associates. The EA took the comments from affected staff negotiated the details of these classification changes with the Air District until December 2016.

On December 2, 2016, the EA and that Air District reached a tentative agreement on the class study.

About January 17, 2017, a concern was brought to the EA Board that the FLSA designation for the Engineer I/II was changed to exempt status.

On January 18, 2017, the Air District Board of Directors voted to approve the changes in the classification studies.

The EA collected questions and comments from members about the classification study and we have provided those questions and answers in as item 1 [here](#).

The EA's attorney, with over 30 years of labor law experience, has written opinion about this issue as item 2 [here](#).

It is worth highlighting that in our attorneys opinion **"All classifications covered by the MOU are entitled to overtime** pursuant to Section 9.04. Under that section, authorized overtime must be paid whenever an employee exceeds his/her normal workday or when he/she works in excess of 40 hours per week. This is a contractual entitlement and is not affected by the FLSA. When the employee works authorized overtime, he/she is entitled to "one and onehalf times base hourly rate." **Your engineers are entitled to that overtime premium regardless of any FLSA designation.** The obligation is enforceable through the MOU's grievance procedure"

The Air District has also written a statement as item 3 [here](#)

the FLSA designation for the Engineering class.

Follow up questions from the special membership meeting were sent to Koff and Associates.

**Questions from EA:**

"1) When determining if a position is exempt or non-exempt, does Koff use the information contained in the spec as the sole basis for that determination?

Do you look at collective bargaining agreements (CBA)? If so, do you take them into account? It doesn't seem that was the case with the study for the Engineering class series as well as the Admin Analyst class series. The reason is the CBA between the union and the Air District clearly states that all bargaining unit members are eligible to earn overtime. If an employee can earn overtime why would he/she be designated as FLSA Exempt?

2) Specifically for the salary test, it doesn't make sense to the engineers that they would be designated as FLSA exempt if they are hourly employees. Their job specs might state a yearly salary, however, Engineers are paid hourly. If they don't work a fully 80 hour pay period, they have to account for missed time via sick leave or other types of leave that employees accrue over the course of the year. The union would like an in-depth explanation, step-by-step, as to how the FLSA duties test and salary test were applied to the employees? "

**Response from Koff.**

"Exemption status is determined by body of work performed and can vary by position. We would not look at CBAs but rather **at the work they described in their questionnaires**. The law is put in place to protect workers from exploitation and wants to ensure that non-exempt workers would receive OT for excess hours worked. It is perfectly legal for an employer to choose to pay OT to an exempt worker even though they don't have to by law but it is not OK for them not to pay OT to a non-exempt worker.

I would imagine that your employees are salaried but for OT purposes the salary has to be converted to an hourly equivalent and yes, there are laws that dictate how missed time needs to be accounted for. I did provide the explanation on the different types of exemptions and the Engineers would fall under the professional exemption. **I believe everyone who participated emphasized the advanced body of knowledge that they possessed and the regular use of judgment and discretion in the performance of their work.**"

The full email exchange can be found as item 4 [here](#).

The EA has started contract negotiations. As part of the negotiation, ground rules have been discussed and both parties will agree to limit the negotiations

## OPINION PIECE from Engineering Members about FLSA Exemption

### **DO YOU WANT TO WORK OVERTIME WITHOUT PAY?**

Dear EA Members:

On March 6<sup>th</sup> we urge you to **REJECT** the new job classification studies. The engineer classification study designates engineers as FLSA EXEMPT, which takes away an employee's right to receive overtime pay.

### **AS A NON-ENGINEER WHY SHOULD YOU CARE?**

1. **You Could Be Next!** A classification study for your job may result in a similar conclusion. One of the criteria used to designate an employee FLSA Exempt is whether he/she is a learned professional. With a science, engineering, or planning background, many other classes of District employees qualify as exempt such as planners, meteorologists, and chemists. Let's show management that we will not accept this designation for engineers or any other group of employees.
2. **Divide and Conquer.** Labeling one group of union members as exempt and others as non-exempt will create a division within the union. By creating two factions, management will be able to pit one side against the other in future negotiations. We should not give management this upper hand.
3. **Wasteful Spending of Your Dues.** In the event that the overtime protections are removed from the MOU, and an employee is denied overtime pay, the EA would take the issue to court. With the exempt designation approved by the Air District and the EA, we would have no legal standing in the courts. It would be a losing battle. And who will end up paying for each of these court battles? You! Court fees can be a huge expenditure so let's avoid wasteful spending and mental agony by voting to reject the classification studies and thereby, retaining the status quo.

If these negative effects aren't enough to convince you to reject the job classification studies, perhaps the following will change your mind.

- The consultant, Koff & Associates, which conducted the job classification study, incorrectly assumed that engineers exercise discretion. However, the work done by engineers is required by law to conform to strict rules

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- Koff & Associates conducted the same study at Monterey Bay Air Resources District and designated their engineers as non-exempt. Since their engineers have the same duties and responsibilities as the engineers here, why would the designation be different? [See Attachment Item 5.](#)
- The EA Board and Management argue that overtime is protected by the **current** MOU. But what happens when the MOU is up for renewal this coming June or in the future? There is always something to trade away like we did with our COLA, the District's contribution to CALPERS, transit benefits, etc.
- Both the EA Board and Management have stated that this designation carries no significance. If it is truly insignificant, why change the designation? We should retain the status quo.
- The EA Board is concerned that the rejection of the job classification will potentially damage the relationship with Management. We believe that the EA Board should be more concerned with properly representing its members and safeguarding their best interests.

So with this information, please ask yourself: what do you want the union to stand for? It is up to you, the individual member, to uphold the values and virtues of the union. The purpose of the union is to be able to count on the support of your fellow members. Please choose to bolster the ideals of a union and strengthen our collective bargaining powers by voting to reject the job classification studies.

Thank you for your careful consideration.

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## EA Board Meetings

The EA Board meets on the second Wednesday of the month in the Bay Area Conference Room 6102. Meeting agendas are posted on the EA and the Public Bulletin boards one week prior to the meeting. Our next EA Board Meeting will be March 8th at 11:45 am.

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## 2017 Baseball Games

This year the EA will be going to the A's vs. Giants exhibition game. There are 100 tickets available. Please sign up by **March 1, 2017**.

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## hosting TWO days of baseball and one BBQ



**Oakland A's vs San Francisco Giants**



(Exhibition Game)

**Saturday, April 1, 2017**

**Game time 12:05 PM**

**Tailgate BBQ 10:00 AM-11:30 AM**

The EA Social Committee will host a tailgate BBQ (hot dogs & links) before the game in Oakland Coliseum parking lot "B" near the area of the power line towers



**Oakland A's vs Washington Nationals**



**Friday, June 2, 2017**

**Game time 7:05 PM**

**No BBQ**

**If you sign up for the 1<sup>st</sup> baseball game, you will receive tickets for the 2<sup>nd</sup> game!**

Please contact Frank Dickey via email at [fdickey@baaqmd.gov](mailto:fdickey@baaqmd.gov) to sign up

**RSVP before March 1, 2017**

(Only 100 tickets available)

**EA Members Free**

**Non-EA members \$20 per ticket**

(maximum 3 non-EA member tickets per member)

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**Labor History. March 8, 1908**



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15,000 women workers in the needle trades take to the streets of New York City on the fifty-first anniversary of the 1857 protest by women garment workers. They demanded better working conditions, suffrage, and an end to child labor. March 8 has been celebrated as International Women's Day since 1910.



The "Junior Inspector". Let's put this one to rest, there is no such thing as a Junior Inspector. However, there is a section 7.13 (Acting Assignments) in the MOU that does allow the Air District to back-fill vacant positions with other staff while an ongoing recruitment is in place for that vacancy. That is the current situation in Enforcement. Some Air Quality Technicians are on acting assignments while we currently have an active inspector recruitment. This type of situation is okay; however, we must be vigilant. Acting assignments and limited term assignments seem to have a way of being misused. If you hear about something, or see something you are not quite sure about, then let us know so we can investigate. It takes all of us working together to defend the contract.



## BETTER KNOW YOUR MOU

### ARTICLE VI CLASSIFICATION STUDIES

1. Up to 6 classifications will be reviewed in each of the remaining years of the current MOU. The EA and the District will each select up to three classification series.
2. Bargaining unit positions in selected job classifications will be audited to determine whether the positions are correctly classified.
3. Job classification descriptions will be thoroughly reviewed to determine whether they need to be updated to reflect changes to the work being performed in the positions assigned to those classifications, including the knowledge, skills and abilities, examples of duties, and qualifications required to perform the work.
4. Review of classifications may include a compensation analysis to determine if adjustment to the rate of pay for a classification is warranted based on external comparators and/or internal equity considerations.
5. No bargaining unit employee will be subject to a reduction in force, demoted, y-rated, or suffer a reduction in salary or benefits based on the results of an audit of his/her position, a review of the job classification description assigned to their position, or a compensation analysis.
6. In the event that a compensation analysis conducted pursuant to this Side Letter of Agreement indicates that an adjustment to pay rates is warranted, the Human Resources Officer shall prepare a report and recommendation for consideration by the Board of Directors as part of the annual budget preparation process.
7. All position audits, job classification description reviews, and compensation analyses conducted pursuant to this Side Letter of Agreement shall be performed by an external consulting firm mutually agreed upon by the parties.
8. The cost of any work performed pursuant to #7 shall be borne equally by the District and the Association, except that the Association's costs for such work shall not exceed \$15,000 per year.

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10. Aside mutual agreement in the form of a side letter, existing represented classifications shall remain in full force and effect without modification for the term of this MOU.

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