

AI's Seat at the Table: The Role of AI in Labor Relations

Alexander Volberding
LIEBERT CASSIDY WHITMORE
6033 West Century Blvd., Fifth Floor
Los Angeles, CA 90045
Telephone: (310) 981-2000
Facsimile: (310) 337-0837

Gabriella Kamran
LIEBERT CASSIDY WHITMORE
6033 West Century Blvd., Fifth Floor
Los Angeles, CA 90045
Telephone: (310) 981-2000
Facsimile: (310) 337-0837

AI's Seat at the Table: The Role of AI in Labor Relations

Alexander Volberding, Partner
Gabriella Kamran, Associate
Liebert Cassidy Whitmore

I. INTRODUCTION

As artificial intelligence (AI) becomes increasingly integrated into city operations, public agencies must navigate its impact on labor relations. While AI can enhance efficiency both in the labor negotiations context and in personnel management generally, it also raises concerns about job displacement, changes in working conditions, and the potential for surveillance—all issues that implicate labor relations and bargaining obligations.

This white paper focuses on the intersection of AI and labor relations, equipping city leaders with a framework to implement AI responsibly while adhering to obligations under the Meyers-Milias-Brown Act (“MMBA”) and other applicable labor laws. The paper also addresses emerging case law and legislative developments that underscore important considerations for public agencies seeking to integrate AI into the workplace.

II. OVERVIEW OF AI APPLICATIONS IN THE PUBLIC SECTOR

What is AI?

Before discussing the applications of AI by public agencies and the potential labor relations implications of its use, this section provides a foundational understanding of how AI operates.

AI systems draw data and information from myriad sources to make predictions, recommend actions, or automate repetitive tasks. Specifically, AI draws on data from large-language models (“LLM”) that have collected and store massive amounts of data and information from various sources. The AI model’s “intelligence” is really a sophisticated pattern recognition system that, at a basic level, detects patterns in language and uses statistical probabilities to predict the next word in a sequence. The more data these AI models access, the better they generally perform, including on myriad tasks not related to language recognition.

Each AI service, whether it’s OpenAI’s ChatGPT, Google’s Gemini, Anthropic’s Claude, or a custom enterprise model, applies its own rules, instructions, and guidance (collectively an algorithm) to process the raw data and the user’s inputs to generate a response or result. This includes varying approaches to speed and accuracy as well as issues like user security and privacy. Some products may be more focused on speed than accuracy or comprehensive responses and some services may prioritize user privacy and security than others.

Contradictions between developer-embedded assumptions and rules learned from data/machine learning may, and often does, lead to hallucinations, or incorrect, nonsensical, or misleading information presented as fact.

LLMs predict words based on probability, not accuracy, and lack the Artificial General Intelligence (“AGI”) to actually “understand” the meaning of the words they use. Thus, AI sometimes “fills in the blanks” based on statistical likelihood, at the expense of factual accuracy. The fact that AI is trained and relies on data and information produced by humans is also the reason that AI may produce biased responses or results to questions. Humans generate the content on which AI operates, therefore human biases, stereotypes, and errors are inevitably embedded in that data and information. Biases and hallucinations are among the reasons why human oversight of AI applications in the public sector is imperative.

AI in the public sector encompasses a variety of technologies, including chatbots, scheduling software, and generative AI tools. Generative AI means that the tool uses data to produce, synthesize, or reorganize text, images, music, and even computer code. Traditional AI, on the other hand, combs through data to make decisions or predictions, but does not produce novel content.

How are cities in California using AI?

Public agencies in California are beginning to use AI in novel ways to address specific issues of concern. The following are some examples:

- The City of Corona uses an AI-enhanced camera to capture images from city-owned vehicles in order to detect and assess the severity of potholes on City streets. The system generates automated work orders for street and road repairs, which city staff use to prioritize the necessary repairs.
- The County of Los Angeles recently partnered with an AI company, Archistar, to streamline the building permit process in the wake of the Eaton and Palisades fires. A proprietary AI reviews building plans in the burn areas to assess the plan’s compliance with the applicable building code. This allows homeowners, builders, and architects to pre-validate designs before submission to the County for review and approval, expediting the processing of permitting and the recovery of communities in the burn areas.
- CalFire uses AI to monitor fire-prone areas through a network of wildland cameras. The AI-enhanced cameras improve fire suppression by predicting the occurrence of fires based on environmental conditions, detecting fires early, and assessing the likely spread of such fires. The agency leverages AI to analyze satellite imagery, weather and environmental data, and provide real-time mapping and tracking of the fire's progress. AI-powered drones can also survey the area and offer information to firefighters on the ground.

In the employment context, cities are using AI to assist with the following types of work: (1) automating tasks (76% of respondents); (2) making better and more informed decisions (41%); and (3) engaging the community (23%).¹ Some common use cases of AI include the following:

- Notetaking during meetings and summarizing written material;
- Preparing first drafts of emails and other documents, like meeting agendas;
- Revising job descriptions and interview questions;
- Analyzing employee performance and attendance;
- Generating and revising disciplinary letters and evaluations;
- Optimizing scheduling based on staffing needs and employee preferences; and
- Handling California Public Records Act and union requests for information

Notably, however, a survey by the accounting firm Ernst & Young found that state and local government agencies lag behind the federal government in AI adoption.² Specifically, 48% of state and local agency respondents valued AI experience in job candidates, compared to 70% in federal agencies. Additionally, 39% of state and local agencies had never offered AI training, versus 28% for employers generally. The survey underscores the importance of investing in an AI strategy and governance plan (discussed in a later section) in order to harness the potential of AI at your agency.

III. AI-RELATED LEGAL CONSIDERATIONS UNDER THE MMBA

The implementation of AI tools in the workplace may change working conditions, impact privacy, and potentially may make obsolete certain tasks traditionally or historically performed by employees. These changes make the use of AI not just a technological issue, but a labor relations one as well.

The MMBA is the California labor law that applies to cities, counties, and special districts. Under the MMBA, public agency employers must meet and confer in good faith with recognized employee organizations over matters within the scope of representation, namely, wages, hours, and other terms and conditions of employment. Management decisions are typically exempt from mandatory bargaining, but the impacts and effects of management decisions on employees may also be subject to negotiation.

Management generally has the right to make operational decisions, including the adoption of new tools and technologies. Therefore, the decision to acquire and implement AI tools, whether it is geared at enhancing the provision of public services or management of personnel, is generally a management decision that is not subject to negotiation. However, such non-negotiable decisions may be subject to effects or impacts bargaining before the agency may lawfully implement the non-negotiable decision.

A notable exception to the above is surveillance technology, which triggers heightened scrutiny due to the technology's impact on employee privacy and working conditions.

¹ Source: https://hbr.org/2024/12/how-u-s-cities-are-using-ai-to-solve-common-problems?ab=at_art_art_1x4_s01.

² Source: <https://statescoop.com/federal-government-state-local-ai-adoption-2024/>.

Surveillance systems are typically considered within the “scope of representation,” meaning their acquisition and implementation are *not* strictly management decisions. (See *Rio Hondo Community College District* (2013) PERB Decision No. 2313, pp. 14-16.) Thus, if a public agency intends to use AI technology to monitor employees’ physical or virtual activity, the agency must provide employee organizations notice and an opportunity to bargain over the decision.

However, as provided above, even when decisions to implement AI are non-negotiable managerial prerogatives, employers are still obligated to provide employee organizations with notice and an opportunity to negotiate the effects or impacts of the decision. The effects and impacts of AI technology may include changes to daily workflows, the availability of evidence supporting employee discipline, and employee training requirements associated with new AI tools. (See *City of Sacramento* (2020) PERB Decision No 2745-M, pp. 17-20.) In such a scenario, the employee organization has the obligation to identify a matter within the scope of representation that is affected by management’s decision to adopt and implement AI. (*County of Sacramento* (2013) PERB Dec. No. 2315-M.)

To the extent that an agency’s use of AI performs duties that are currently performed by agency employees, the agency’s decision to use AI in that manner may implicate the body of Public Employment Relations Board (“PERB”) decisions regarding transfer of bargaining unit work. The decision to transfer work that was previously performed by bargaining unit employees is typically a mandatory subject of bargaining. (See, e.g., *City of Glendale* (2020) PERB Dec. No. 2694-M.) While we are not aware of an existing PERB decision that addresses transfer of bargaining unit work to be performed by an automated technology or tool, rather than people outside of the agency or in other bargaining units, it is possible that PERB will extend this reasoning to require agencies to bargain before utilizing any non-bargaining unit alternatives, including AI technology. Cities should be aware of this potential duty to bargain even where AI technology is poised to displace specific job duties, rather than entire positions at the city.

Agencies should also be mindful of avoiding direct dealing with represented employees when communicating about new AI policies and tools. Direct dealing occurs when a public agency communicates or negotiates directly with represented employees about matters within the scope of representation, thereby bypassing the union. This is an unfair labor practice because it undermines the union's exclusive right to represent its members in negotiations over wages, hours, and working conditions.

The bottom line is that even if AI adoption is a management right, the effects or impacts of the implementation of AI technologies tools may still be negotiable. Agencies should provide notice to all employee organizations when they are proposing to adopt a new AI-based tool or technology and provide employee organizations the opportunity to identify how the use of AI may affect or impact employee wages, hours, or the terms and conditions of their employment.

IV. UNION INTERESTS RELATED TO AI

Public employees, like employees in the private sector, may fear that the adoption and implementation of AI will result in mass layoffs and workforce reductions or job replacement, re-categorization, or re-assignment. Public employees may also be concerned about less fundamental, but nevertheless significant, changes to working conditions precipitated by the adoption of AI, such as mandatory training on and use of AI and AI-powered surveillance.

As witnessed in recent labor disputes with longshoremen on the East Coast and earlier strikes in Hollywood with screen actors and writers, demands by workers for protections against AI automation were key issues in bargaining. Recently, the California Nurses Association has organized protests across the state to highlight their concerns about using AI technology to perform nursing duties, which the nurses argue may threaten patient health and safety.³

While fears about widespread layoffs and workforce reductions in the public sector are likely overstated at present, it is inevitable that as the use of AI is increased it will qualitatively and quantitatively change the duties that employees perform. A recent study predicted that, while only 9% of jobs presently face a high risk of reduction or replacement due to automation or AI, approximately 60% of jobs involve duties, functions or tasks that could be automated or performed using AI tools or technology.⁴

Unions are increasingly aware of how AI may affect the terms and conditions of employment for the employees that the unions represent. Unions may assert objections to the adoption and implementation of AI tools and technologies and assert that the agency must negotiate both the decision to deploy AI as well as the effects or impacts associated with such deployment. Unions may preemptively make proposals at the bargaining table to limit agency use of AI or may make such proposals in response to notice from the agency about a forthcoming proposal to do so.

Common union proposals related to AI may include the following:

- Prohibiting the use of AI surveillance data in disciplinary decisions;
- Requiring disclosure of AI tools used in performance evaluations and other employment decisions; and
- Preserving bargaining unit work and limiting outsourcing via automation tools or technologies, like AI.

Proactive communication and transparency with employee organizations on AI-related issues may help them understand the potential for AI to be mutually beneficial. For example, AI can support safer staffing levels and reduce administrative burdens if deployed responsibly. Agencies should consider inviting unions to participate in pilot testing or technology advisory groups to foster buy-in (discussed further in Section VI, below).

³ <https://www.nationalnursesunited.org/press/cna-demand-patient-safeguards-against-artificial-intelligence>.

⁴ <https://www.gao.gov/blog/which-workers-are-most-affected-automation-and-what-could-help-them-get-new-jobs>.

V. AI AS A TOOL TO ENHANCE LABOR RELATIONS

AI is not only a potential disruptor—it can also support cities in the bargaining process and other labor relations settings.

One AI application with great potential to reduce administrative burden is using AI tools to streamline responses to union requests for information (“RFIs”). AI can comb large datasets, such as payroll and scheduling data, to respond to RFIs regarding overtime, staffing levels, or benefit usage. An HR Analyst could upload dozens of documents containing bargaining unit member information to an AI engine, such as ChatGPT, and ask it to populate a spreadsheet that can be easily conveyed to the union. For example, a union may request the number of overtime hours worked by maintenance staff in the last quarter. An AI tool can quickly analyze time logs, flag anomalies, and generate a formatted report with visual summaries.

Generative AI can also provide valuable assistance in preparing for negotiations. Applications include preparing draft memorandum of understanding (“MOU”) provisions or bargaining proposals by synthesizing boilerplate language and relevant data. AI can thereby promote consistency both within and across MOUs at the agency, as well as flag ambiguous language that the agency might not have noticed otherwise. For example, an agency could upload the current MOUs for all of its bargaining units to an AI engine and ask it to flag variations in language for comparable provisions, such as sick and vacation leave policies. The agency could also upload grievances that it received during an MOU’s term, along with the MOU, and ask an AI tool to flag the specific provisions and language that prompt grievances most often.

For agencies that prepare classification and compensation studies in-house, AI is a potentially powerful tool for performing market analysis. AI could help agencies select comparator cities across a number of criteria, benchmarking positions, aggregating publicly available market data, and synthesizing the data regarding compensation, benefits and other terms and conditions of employment.

One AI tool that has started to appear at bargaining tables, whether via Zoom or in-person, is notetaking software. While AI voice-to-text transcription can assist in creating an accurate record of bargaining sessions, agencies should proceed with caution. AI notetaking tools can introduce data privacy issues, i.e., if the software is inadvertently left on during a caucus, it may record the city’s confidential bargaining positions, personnel information, or non-public financial data.

As with all AI applications, AI tools increase efficiency and accuracy, but should not replace human review and contextual judgment.

VI. DEVELOPING A GOVERNANCE AND IMPLEMENTATION STRATEGY

While it may be tempting to rush to catch up with the rapid pace of AI innovation, slow and steady wins the race. Successful AI integration in city operations begins with establishing a governance framework that incorporates labor relations considerations from the outset.

Developing an AI strategy starts with identifying uses of AI that are aligned with the mission and the needs of your city, whether the need pertains to service delivery or personnel management. Employees, and their representatives, will likely be more agreeable to the introduction of AI tools in the workplace if the city can point to a concrete need that AI will help fulfill. A failure to justify an investment of city time and resources on AI can reduce employee and community buy-in.

Next, a governance framework is a crucial ingredient in promoting consistent, comprehensive, and legally-compliant applications of AI at your agency. At its core, governance refers to the systems, processes, and structures used to make decisions, set policies, and ensure accountability within an organization. Therefore, a governance framework should address who has authority to make decisions regarding AI implementation (e.g., City Council, City Manager, Department Heads); the process that they must follow in acquiring and rolling out an AI tool, including the process for consulting with employee organizations and other groups; and a plan for monitoring both the effectiveness of the AI tool and legal compliance. A governance structure that incorporates union involvement at the outset can address unions' concerns about AI in the workplace. Likewise, involving unions in the process for testing and providing feedback on a pilot AI program can promote a sense of being heard and reduce resistance to AI implementation.

We recommend developing a written AI policy and governance structure, both in the interest of transparency and to promote consistent enforcement of the city's expectations. This policy is a valuable component of an overall effort to communicate clearly and regularly with unions to build the trust necessary to adopt AI at the city, especially for mission-critical applications. For example, a policy that explicitly states that confidential personnel information will not be used to train AI tools can facilitate employee organizations' buy-in. Note that an AI policy will likely be subject to the requirement to provide employee organizations with notice and an opportunity to identify negotiable effects and impacts.

VII. KEY TAKEAWAYS

Involving employee organizations in your agency's adoption of AI is not only legally required; it is also strategically wise. Even where the acquisition and implementation of an AI tool is arguably a management right under the MMBA, the technology likely will not be a worthwhile investment if the agency lacks employee and union buy-in. Proactively considering and addressing employee interests with respect to AI, including at the bargaining table and in the meet and confer process regarding the impacts of a specific AI tool, is instrumental to maximizing AI's potential to be a mutually-beneficial asset in the workplace.