

County of Santa Clara

Employee Services Agency

Labor Relations

County Government Center, East Wing
70 West Hedding Street, 8th Floor
San Jose, California 95110



June 21, 2023

Riko Mendez
Chief Elected Officer
SEIU Local 521
2302 Zanker Rd.
San Jose, CA 95131

RE: County Proposal on Strikes and Lockout and Management Rights

Dear Mr. Mendez:

Thank you for your June 16, 2023 letter clearly setting forth the Service Employees International Union Local 521's (SEIU) position on proposed revisions to the parties' existing no-strike clause and the County's proposed management rights clause. As an initial matter, clarifying the parties legal bargaining obligations is important to be able to work together to reach an agreement.

Contrary to your assertion, the Public Employment Relations Board (PERB) considers no-strike clauses mandatory subjects of bargaining, although an employer may not unilaterally impose them if the parties reach impasse. (*See County of Orange* (2018) PERB Decision No. 2594-M, citing *Fresno In-Home Supportive Services Public Authority* (2015) PERB Decision No. 2418-M.) Similarly, although it has not squarely addressed the issue, PERB has approvingly discussed NLRB case law holding that management rights clauses are mandatory subjects of bargaining. (*Los Angeles Unified School District* (2013) PERB Decision No. 2326, citing *WKYC-TV, Inc.* (2012) 359 NLRB 30 [arbitration provisions, no-strike clauses and managements rights clauses are mandatory subjects of bargaining].) None of the cases in your letter say otherwise.

Moreover, the parties are not at impasse, and the County has not attempted to impose a no-strike clause or management rights clause. SEIU's refusal to meet and confer regarding these mandatory subjects of bargaining is, therefore, improper, since the parties are still meeting and conferring for a successor Memorandum of Agreement.

Clarifying the current facts is also important. These County proposals are not anti-union or an attempt to "bust the union," as SEIU claimed. As previously explained to SEIU via email on Wednesday, June 14, 2023, a no-strike clause has historically (and continues to be) the trade-off for the employer agreeing to binding arbitration of disputes regarding the parties' collective bargaining agreement. The Earl Warren-led United States Supreme Court recognized this principle in 1957 in *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957) when it stated:

The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement.

Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.... Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike.... [T]he entire tenor of the history indicates that the agreement to arbitrate grievance disputes was considered as the quid pro quo of a no-strike agreement.

(*Id.* at 454-455.)

The County and SEIU currently have both binding arbitration and a no-strike clause in their existing Memorandum of Agreement. That SEIU desires to retain the benefit of binding arbitration without giving the County the full, historically recognized protection of a no-strike clause does not make the County's actions anti-union or an attempt to bust the union. Rather, the County's proposal seeks to ensure that the County has and continues to receive the benefit they have long intended: to be free from any job actions during the term of the agreement, in exchange for the County agreeing to submit resolution of disputes to binding arbitration.

With respect to SEIU's complaint about the "non-sensical" no lockouts portion of the County's proposal, the County carried that over from the parties' *existing* no-strike clause, the first sentence of which **currently states**:

During the term of this Agreement, **the County agrees that it will not lock out workers** and the Union agrees that it will not engage in any concerted work stoppage.

(MOA, Article 25, "Strikes and Lockouts.") If SEIU finds no value in the agreement not to lock out County employees, the County is willing to withdraw that portion of its proposal.

SEIU's claim that the County is "conditioning further bargaining and an eventual agreement about mandatory subjects on SEIU's willingness to negotiate and agree upon these non-mandatory subjects" is untrue. The County has not conditioned its position on any other mandatory subjects on SEIU agreeing to the County's proposals on strikes or management rights.

The County hopes that the parties can continue making progress towards reaching a mutually agreeable collective bargaining agreement. The County is considering the concerns SEIU has expressed about specific parts of these proposals and will determine whether to address those in a future counterproposal.

Sincerely,



Matthew Cottrell
Director Labor Relations
County of Santa Clara

Cc: Jefferey Smith, County Executive
Debbie Narvaez, Chief of Staff
Andrea Hightower, Senior Coordinator