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June 16, 2023

Matthew Cottrell
Labor Relations Director
County of Santa Clara
70 West Hedding, 8th floor
San Jose CA 95110

RE: County Proposal on Strikes and Lockout and Management Rights

Dear Matthew,

The County’s proposal to amend Article 26 (Strikes and Lockouts) concerns a non-mandatory subject of bargaining, as it seeks to waive the Union’s and the employees’ statutory right(s). (*See, e.g., Berkeley Unified School District (2012) PERB Decision No. 2268; Fresno County In-Home Supportive Services Public Authority (2015) PERB Decision No. 2418-M; City of Pinole (2012) PERB Decision No. 2288-M.*) As the County knows well, employees have the statutory right to engage in many types of job actions, including individually honoring a picket line and participating in a sympathy strike called by their union. (*San Francisco County Superior Court (2018) PERB Decision No. 2609-I and SEIU Local 1021 v. City & County of San Francisco (2017) PERB Decision No. 2536-M.*)

The County’s Strikes and Lockouts proposal is also non-sensical. For example, when an employee is working-to-rule, they are not engaged in a work stoppage. The County does not understand the meaning of working-to-rule. Also, the County’s promise to not lock out workers has no value for the Union and employees because a public employer is never permitted under the Meyers-Milias-Brown Act to lockout workers. (*County of San Joaquin (2021) PERB Decision No. 2761-M.*)

We see the County’s Strikes and Lockouts proposal as a blatant attempt to bust the Union. The County wants to stifle its workers’ efforts to hold management accountable for undervaluing the workforce, overusing and abusing temporary workers, and holding critical positions vacant.

The County’s proposal to add a new management rights clause concerns a non-mandatory subject of bargaining too, as it seeks to waive the right of the Union to bargain over mandatory subjects of bargaining and has the effect of undermining the role of the Union in the collective bargaining process, weakening the independence of the exclusive representative chosen by the employees. (*See, e.g., Retlaw Broadcasting Co. v. N.L.R.B. (9th Cir. 1999) 172 F.3d 660; Fresno County In-Home Supportive Services Public Authority, supra, PERB Decision No. 2418-M.*)

The long listing of so-called “management rights” is inconsistent with the Meyers-Milias-Brown. Many of the listed subjects – for example “to contract out bargaining unit work to meet operational and patient needs...[and] to establish and revise safety standards” – are within the scope of representation, requiring prior notice and opportunity to bargain. Worse yet, the County seeks to perpetuate its “management rights” even after the labor contract expires, which negates the purpose of contract expiration date.

The Union objects to the County's conduct of conditioning further bargaining and an eventual agreement about mandatory subjects on the Union's willingness to negotiate and agree upon these non-mandatory subjects. The Union declines to bargain further over these permissive proposals. The Union therefore requests that the County withdraw these two proposals immediately. The County is not authorized to insist on either of these two proposals to the point of impasse. The Union remains ready to continue bargaining in good faith in order to reach an agreement.

Sincerely,

Riko Mendez
Chief Elected Officer

CC/ Debbie Narvaez, Chief of Staff
 Jeffrey Smith, County Executive
 Andrea Hightower, Senior Coordinator