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— Labor & Employment Law —

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VIA EMAIL/PDF (ONLY)
steve.matthews@seiu721.org

SEIU – Riverside
Service Employees International Union, Local 721
4336 Market Street
Riverside, CA 92501

**RE: County of Riverside/SEIU, Local 721
County Responses to Local 721 Proposed Side Letters**

Dear Mr. Matthews:

We are in receipt of SEIU Local 721's recent side letters and proposals to the County, and respond as follows:

First, Local 721 raised a concern that the County did not make appropriate contributions to the SEIU pension of 10 cents per hour for mandatory and voluntary furlough hours taken by SEIU represented employees. Related, you have submitted an information request for a report showing all mandatory and voluntary furlough hours taken by SEIU represented employees.

The County has investigated this claim and finds that it may be correct. The County has thus initiated necessary steps to accurately assess this claim, and to ensure that all proper contributions were or will be made. The County will also provide the report requested as soon as it is prepared at the end of this pay period. The County will keep you apprized of this matter until it is fully resolved.

Second, pursuant to the Fairness Agreement at Section 34 of the applicable MOU, Local 721 proposed a side letter to the 2010-2011 MOU to provide SEIU members with job security provisions that were recently provided to LIUNA's represented members. The Fairness Agreement states:

“If during the term of this MOU any increases in wages, benefits, retirement incentives or job security provisions are negotiated, mandated, implemented or

reimbursed to any other management, non-represented, confidential or LIUNA represented employees, then such increases stated above shall be given to all SEIU 721 represented employees to the same extent and starting on the same date(s) as the other groups and thereafter.”

The County has evaluated this side letter proposal for job security provisions for SEIU 721 members as applied to the Fairness Agreement. The County concurs that the job security provisions provided to LIUNA’s members would be the same “such increases” provided “to the same extent” if applied to SEIU’s members. Thus, the County agrees that the Fairness Agreement is triggered in this instance, and will agree to this side letter.

Third, Local 721 proposes another side letter to Article 5 – Pay Practices of the 2010-2011 MOU, also pursuant to the Fairness Agreement, that SEIU’s freeze on step increases be rescinded on June 16, 2011. The basis of this proposal is that the County and LIUNA recently agreed that LIUNA’s freeze on step increases will sunset in two years, which is June 30, 2012. SEIU thus proposes that its members’ step increase freeze also sunset after two years, which would be June 16, 2011.

Here, the Fairness Agreement states in pertinent part:

“If during the term of this MOU any increases in wages, benefits, retirement incentives or job security provisions are negotiated, mandated, implemented or reimbursed to any other management, non-represented, confidential or LIUNA represented employees, then such increases stated above shall be given to all SEIU 721 represented employees to the same extent and starting on the same date(s) as the other groups and thereafter.” (Emphasis added.)

* * *

“If step increases are reinstated for any group above, then step increases shall resume for all SEIU 721 represented employees...” (Emphasis added.)

The County does not agree to this proposal on the grounds that it is contrary to the intent and the express language of the Fairness Agreement. The intent of the Fairness Agreement, as demonstrated in the express language, is to give SEIU members the same “such increases” when “reinstated” to other groups, and “starting on the same date(s) as the other groups.”

Here, the sunset “date” of LIUNA’s freeze on step increases is currently scheduled for June 30, 2012, not June 16, 2011. Thus, under the express language of the Fairness Agreement, LIUNA’s step increases would not be “reinstated” until June 30, 2012. Further, depending on continuing economic conditions and future negotiations with LIUNA, the date that such increases are actually reinstated to LIUNA members could possibly be extended beyond June 30, 2012. Finally, this proposal seeks to include a two year sunset clause which SEIU did not negotiate.

For all of these reasons, the County does not agree to this side letter proposal to rescind SEIU members' freeze on step increases on June 16, 2011.

Fourth and finally, Local 721 proposed two additional side letters to the 2010-2011 MOU, also pursuant to the Fairness Agreement, requesting: (1) a 2.71% general wage increase for all (over 6000) SEIU represented employees; and (2) for premium pay of 2.5% to any SEIU represented employee who possesses a Bachelor's Degree; and (3) for an additional 2.5% premium pay for any SEIU employee who possesses a Master's Degree. This proposal is brought pursuant to the "Fairness Agreement" set forth in Section 34 of the applicable MOU, in response to the Board's recent approval of an additional step increase and reinstatement of education incentives for 10 executive level sheriff's department employees.

Again, the Fairness Agreement states in pertinent part:

"If during the term of this MOU any increases in wages, benefits, retirement incentives or job security provisions are negotiated, mandated, implemented or reimbursed to any other management, non-represented, confidential or LIUNA represented employees, then such increases stated above shall be given to all SEIU 721 represented employees to the same extent and starting on the same date(s) as the other groups and thereafter." (Emphasis added.)

The County has also reviewed and evaluated this proposal, and does not agree to it for the following reasons:

In this case, the proposed side letters initially are not applicable to the terms and conditions of the Fairness Agreement. The side letters propose a "general wage increase" to over 6000 SEIU 721 members, and a new never-before negotiated premium increase to all SEIU members with Bachelor's or Master's degrees. However, the County recently approved only: (1) an additional "step" and (2) to reinstate an education "incentive" (3) to 10 sheriff executive employees and (4) for the purpose of correcting a compaction issue. The proposal is thus not applicable here in that it does not seek "such increases" "to the same extent" as expressly required by the Fairness Agreement as follows:

1. SEIU's proposal seeks 6000+ raises and premium pay increases compared to only 10 step increases to the sheriff executives.
2. The total cost of the approved step increases the education incentives to the 10 sheriff's executives is \$144,200. The estimated cost of requested general wage increase to all SEIU 721 members is \$9,736,483.39. This does not include accounting for the unknown premiums to SEIU members with Bachelor's or Master's degrees.
3. SEIU's proposal for "general wage increases" and new educational "premiums" are not the same "such increases" as the "additional" step" and reinstatement of prior existing and negotiated "education incentives" authorized to the sheriff executives.

4. The sheriff's executives increases were approved to address a compaction issue, and not as general wage increases.

This proposal also is contrary to the mutual intent of the parties in drafting the Fairness Agreement. The primary factor in interpreting any contract is the mutual intent of the parties. (*See, California Civil Code* § 1636: "A contract must be so interpreted as to give effect to the mutual intent of the parties as it existed at the time of contracting, so far as the same is reasonable and lawful."; *see also, In re Bennett* (2002) 298 F.3d 1059; *Christensen v. Smith* (2009) 171 Cal.App.4th 931.)

When the Fairness Agreement was negotiated, this very issue and concern (avoiding mass hiring or raises because one or a few employees are hired or given a raise) was discussed. It was thus specifically addressed, understood and agreed that the Fairness Clause would only be triggered if any group covered by the Fairness Agreement received an "across the board" increase or "cost-of-living" increase or, was provided with special compensation due to recruitment initiatives and/or incentives. This intent is evidenced by the express language of the clause which limits such increases to be applied "to the same extent" as others. Thus, SEIU's request for millions in general wage raises for 6000+ employees and new premium pay for all SEIU members with Bachelor's or Master's degrees, based on the County's approving a step increase and reinstating a pre-existing education incentive to 10 sheriff executives, does not reflect the mutual intent of the parties. In fact, this exact situation was specifically rejected as a contingency during the discussions leading up to the signing of the agreement.

Related, SEIU's proposal constitutes an unreasonable and absurd interpretation of the Fairness Agreement which would be unenforceable under any circumstances. (*See, Cal. Civ. Code* § 1638: "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (emphasis added.); *Cal. Civ. Code* § 1643: "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (Emphasis added); *National City Police Officers' Assn. v. City of National City* (2001) 87 Cal.App.4th 1274; *City of El Cajon v. El Cajon Police Officers' Association* (1996) 49 Cal.App.4th 64; *Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3^d 726, 730.)

Here, we need not belabor the facts. SEIU's requesting raises for over \$9.7 million in general wage increases for over 6000 SEIU 721 members in response to the County's approving a \$144,200 step increase and prior education incentive for 10 sheriff executives is unreasonable and absurd. This is particularly true when considering the economic climate in which the MOU and Fairness Agreement were negotiated. It is also unreasonable when the intent of the small modification to the sheriff's executives was authorized to address retention, recruitment and compaction issues in those few specific positions. Finally on this point, it is unreasonable and repugnant to interpret this specific provision of the MOU to grant millions of dollars and thousands of raises, when considered in the context of the entire MOU and economic climate of reductions and cutbacks. (*See, Cal. Civil Code* § 1652 states: "Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the

whole contract.”; *Cal. Civ. Code* §1641: “The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.”)

For each of these reasons, Local 721’s side letter proposals here are rejected.

Please do not hesitate to contact me if you have any further questions or comments.

Sincerely,

THE ZAPPIA LAW FIRM
A Professional Corporation



Edward F. Zappia

cc: Barbara A. Olivier
Brian McArthur