



September 14, 2010

VIA E-MAIL/PDF (ONLY)

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Edward P. Zappia  
333 South Hope Street, 35<sup>th</sup> Floor  
Los Angeles, California 90071

Dear Mr. Zappia:

We are in receipt of the "County's Responses to Local 721 Proposed Side Letters" dated August 25, 2010 and want to take this opportunity to respond to the arguments you made on behalf of the County.

First, thank you for informing us yet again that the County believes we "may be correct" that it failed to make appropriate pension contributions for furlough hours taken by SEIU Local 721 represented employees. In a letter dated May 5, 2010, the Employee Relations Director Brian McArthur had already acknowledged the County failed to make contributions to the SEIU National Industry Pension Fund for both mandatory and voluntary furlough hours taken by SEIU represented employees during FY 2009-2010, so we appreciate the County finally initiating actions to correct this problem.

We are still awaiting the report showing all furlough hours taken by almost 6,000 SEIU represented employees, but based upon a preliminary report provided by the County on SEIU Mandatory Furlough Savings for August 13, 2009 through June 30, 2010 these employees completed about 1.2 million furlough hours. At the rate of \$0.10 per hour, it would therefore appear the County owes approximately \$120,000 in contributions to the Fund.

We are confident the County did not intend to wantonly violate Articles 25 & 33 of the 2009-2010 Memorandum of Understanding with SEIU Local 721 or the Board of Supervisors Policy C-31 which states in part that "furlough hours will not cause a break in service; or a reduction in employee's service credit for the purposes of seniority, probationary period, retirement, leave accumulation, or anniversary date/merit salary adjustment", "there will be no harm" and there will be a "continuation of seniority, health and retirement benefit accruals, contributions, and payments" (Emphasis added).

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Second, given that the County had already signed the Side Letter Agreement to provide SEIU with the same job protections it negotiated with LIUNA regarding layoffs, we don't think it's necessary for the County's attorney to confirm eight days later that the County would "*agree to this side letter.*" Although SEIU appreciates the County's outside attorney's legal opinion that the Fairness Agreement outlined in Article 34 of our 2010-2011 MOU was indeed triggered in response to the tentative agreement reached with LIUNA effective July 15, 2010, the conclusion and response were not necessary, as SEIU had obtained a Side Letter on Article 16 signed by the County's authorized agent, Brian McArthur, on August 17, 2010.<sup>1</sup>

Third, in regards to the Side Letter requested by SEIU in relation to the reinstatement of step (merit) increases for all SEIU represented employees to the same extent as LIUNA represented employees under the provisions of Article 34, it would appear the County's outside legal counsel does not exhibit a full understanding of the entire language and thus intent of the Fairness Agreement as it pertains to step (merit) increases.

Contrary to the statement that LIUNA's step (merit) increases will sunset in two (2) years, in actuality the language of LIUNA's MOU provides for the reinstatement of step (merit) increases on June 30, 2012 after only 23 months of suspension. Due to the County illegally imposing its Terms and Conditions on SEIU represented employees, eligible SEIU employees had their step (merit) increases frozen starting on July 30, 2009. Since LIUNA represented employees did not begin suspending their step (merit) increases until August 12, 2010, in order for SEIU represented employees to be extended the same provisions on step (merit) increases to the same extent (emphasis added), step (merit) increases would have to resume for SEIU represented employees on June 16, 2011 (PP# 14-2011) or 23 months after they were first suspended.<sup>2</sup>

The County states it believes the intent and express language of the Fairness Agreement was to give SEIU members the same rights to reinstatement of step (merit) increases as other Management, Non-Represented, Confidential or LIUNA represented employees. However, the Fairness Agreement does not establish any criteria for the other employees

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<sup>1</sup> Why the County uses tax payer's money to pay for expensive outside counsel to reconfirm matters is not clear, especially when most counties use their existing County counsel to handle labor relations. It is telling, however, that the County continues to use outside legal counsel, with an anti-union background, to write routine letters and to find legal loopholes to deny hard working employees of their negotiated benefits.

<sup>2</sup> It should be noted this date could change when PERB issues a decision on PERB case# LA-CE-577-M. If PERB rules the County was not at a bona fide impasse when it imposed its terms and conditions on SEIU on July 30, 2009, the County will be ordered to honor the term for the 2009-2010 MOU which started on August 1, 2009. If SEIU's charge proves to be substantiated by PERB, step (merit) increases for SEIU represented employees would be suspended starting August 13, 2009 (PP#18-2009). In that case, the sunset date on the proposed Side Letter Agreement could be changed to June 30, 2011 (PP#15-2011). This would establish the same 23 month suspension on step (merit) increases to the same extent (emphasis added) as LIUNA represented employees.

to actually receive any of the provisions set forth in their MOU's or Resolutions before the same offer is extended to SEIU represented employees, but rather the provision in the MOU mutually agreed to by the County specifies, the negotiation, mandate, implementation or reimbursement for such increases and/or reinstatements that is offered to these other employees. Therefore, the County's denial of the proposed Side Letter Agreement under the argument that "*depending on the 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*" is without merit. The SEIU proposed Side Letter Agreement seeking the same sunset period on step (merit) increases as LIUNA would in no way negate the County from discussing the continuation of suspending such step (merit) increases during negotiations with SEIU for the 2011-2012 MOU. Also, the fact that SEIU did not negotiate a sunset clause is irrelevant due to SEIU negotiating a Fairness Agreement to specifically address these types of issues. In other words, the County should live up to its agreement to give SEIU the same benefit as it negotiated with LIUNA, namely, that step (merit) increases will resume 23 months after they were suspended. Just as the County can attempt to renegotiate this future benefit with LIUNA, it can also attempt to renegotiate this future benefit with SEIU.

Fourth and finally, the County's denial of the two additional Side Letter Agreements related to giving SEIU members the same increases the County just gave Sheriff Department employees shows the County is not honoring its commitment. The Fairness or "*me too*" provision the County agreed to with SEIU quite simply requires the County to give all SEIU members the same increases it gives to any other County employee within the LIUNA, Management, Unrepresented and/or Confidential units. The County specifically stated in bargaining that it would not give any other County employee increases in pay and/or benefits. That was the sole reason why the County said it could agree to the "fairness" provision proposed by SEIU. Now, the County has gone back on its word and given other employees increases, while refusing to give SEIU members the same such increases. Your attempt to distinguish the County's pay increases for a select few Sheriff's Department employees is quite simply contrary to the plain language of the agreement and factually incorrect.

Instead of selectively choosing bits of the Fairness Agreement as you have done, we find it clearer to simply show the whole fairness agreement entered into by the County with SEIU:

*"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 others and thereafter.*

*This provision also applies to any special incentives extended to any other County employee during a period of an Early Retirement Incentive.*

*This provision does not apply to any existing wages, benefits, retirement, or incentives that are reinstated to any of the above groups after the completion of the reductions mandated by the Board of Supervisors, except for the following:*

*If step increases are reinstated for any group above, then step increases shall resume for all SEIU 721 represented employees to the same extent and starting on the same date(s) as the other groups and thereafter.” (emphasis added)*

SEIU submitted two side letters for a single step (2.71%) general wage increase and an Education Incentive for all SEIU members which is identical to what the County just gave to some management employees.

The County’s justification for denying these side letters is based upon SEIU requesting “*general wage increases for over 6,000 SEIU 721 members and a new, never-before negotiated premium increase to all SEIU members with Bachelor’s or Master’s degrees.*” The County readily admits they “*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.*”

In the County’s response, four (4) reasons were provided for the denial:

- (1) Side letters proposed by SEIU are “*not applicable here in that it does not seek such increases to the same extent as expressly required by the Fairness Agreement*” due to SEIU requesting “*such increases*” for “6,000+” employees when the County only gave wage increases to ten (10) sheriff executives for the purpose of correcting compaction. The reason the County authorized the wage increases is irrelevant in relation to the express language of SEIU’s Fairness Agreement.

Perhaps it is due to a simple clerical error, but it appears the County may be confusing SEIU’s Fairness Agreement with LIUNA’s 2010-2012 MOU Fairness Agreement which would be triggered only by “*across the board wage and benefit increases*” granted to SEIU members during the term of LIUNA’s MOU. LIUNA’s express language in their Fairness Agreement also states that “*step increases and other entitlements previously negotiated do not apply.*” SEIU’s Fairness Agreement, as shown above, clearly does not contain this limitation.

The number of affected employees on either side is irrelevant, as underlined in Article 34 above expressly states that if there are ANY increases in wages or incentives to ANY (“any” is defined as +1) other employees within the specified groups then ALL (“all” is defined as “every” to mean all 6,000) SEIU represented employees would be entitled to the same extent (2.71%) and starting on the same date (July 29, 2010 or PP#17-2010). It is underhanded for the County to agree to give all SEIU represented members any increases it gives any other employee, but then later deny those increases because the County only gave the increases to a

few employees in another unit. Perhaps you could explain exactly what part of the words “any” and “all” the County does not understand.

- (2) The County denies the request due to the total estimated cost of providing a general wage increase to all 6,000 SEIU 721 members in comparison to the lower cost of providing the same wage increases to only ten (10) sheriff executive employees. The express language of Article 34 does not provide for economic or financial considerations to be used as a determining factor in the honoring of the Fairness Agreement. In actuality, the County should have been more prudent in considering the full economic burdens granting these ten (10) sheriff executives would place on the County’s financial situation once SEIU’s Fairness Agreement was triggered.
- (3) The County states SEIU’s proposal for general wage increases and new educational premiums are not the same “*such increases*” as they were a “*reinstatement of prior existing and negotiated education incentives authorized to the sheriff executives.*” The County’s response is, of itself, inaccurate as sheriff executive employees are At-Will employees that fall under the Management Resolution and therefore they have no rights to “negotiate” any such education incentives.

SEIU would agree the express language of the Fairness Agreement states the “*provision does not apply to any existing wages, benefits, retirement, or incentives that are reinstated to any of the above groups after the completion of the reductions mandated by the Board of Supervisors.*” The general wage increase granted to the sheriff executive employees; however, was not an existing wage that was parlayed as part of their mandated reduction. In fact, these same sheriff executives continued to be granted additional wage increases and incentives while SEIU members were being asked to take reductions; hence, the possibility of this exact situation occurring again was a driving force behind SEIU obtaining an all inclusive Fairness Agreement during the term of this new MOU.

The Education Incentive for sheriff executives granted in Resolution No. 2008-364 provided Education Incentives to sheriff executive employees to sunset on December 31, 2009. As part of their mandatory reductions, the sunset date was moved up five (5) months early to July 01, 2009. If the County had just reinstated the Education Incentive for the five (5) month period it was sunset early, then SEIU agrees SEIU represented employees would not be eligible for such incentive under the provisions of the Fairness Agreement. However, when the County extended the Education Incentive for two (2) more years to sunset on June 27, 2012 this was an increase in such incentive. Additionally, the County added new classifications which were not previously eligible for such incentive. These two factors triggered the provisions set forth in the Fairness Agreement.

As previously addressed in #2 above, SEIU would have expected the County to be more prudent in considering the entire fiscal impact of their decision prior to expanding such incentives to a select few employees within the Sheriff's Department. SEIU would have thought an Education Incentive would only be extended to employees as a way to provide an "incentive" to improve their education, so we were disappointed to see a 2.5% premium extended to employees who require a Bachelor's degree to even hold their positions within the County.

With all that being said SEIU cannot in good faith forgo the same incentives for its members or ask them to carry a larger portion of the burden simply due to the County's obvious lack of consideration for the economic impact this would have on the County. SEIU has repeatedly tried to assist the County in decreasing such economic burdens through the use of efficiencies and cost saving measures outlined by both the SEIU Efficiency Task Force and the County's S.C.R.A.P.E. report to no avail. As of this date, many of these ideas have yet to be implemented while the County continues to search for future ways to further reduce previously negotiated compensation for SEIU represented employees, such as their pensions.

- (4) The County states SEIU represented employees are not eligible for a wage increase, because the salary increases for sheriff executives were approved to address a compaction issue and not as a general wage increase. The express language of Article 34 does not provide for any exclusion based upon the County's justification for granting such increases to be used as a determining factor in the honoring of the Fairness Agreement.

The County also states SEIU's Side Letter proposals are "*contrary to the mutual intent of the parties in drafting the Fairness Agreement*"; however, considering the SEIU Central Bargaining Team authored the language of the Fairness Agreement, we are acutely aware of the full intent behind the acquisition of a promise of fairness and equality from the County for all SEIU represented members due to previous egregious disparities enacted on them in bad faith in the past. In fact, there was not a lot of discussion during the bargaining about SEIU's Fairness Agreement proposal, which you would have known had you actually been at the bargaining table. As evidenced by SEIU's initial proposal followed by the County's counter proposal for Article 34, the only concern the County raised during negotiations was to request the removal of language regarding reinstatements to be limited to the completion of the "10%" reductions to just "*the reductions mandated by the Board of Supervisors.*" SEIU agreed to the County's request and the mutual tentative agreement was signed by both parties on that same date. Again, the County's referral to this exact situation being "*specifically rejected as a contingency during the discussion leading up to the signing of the agreement*" did not occur during the negotiations with SEIU and the County is perhaps confusing the terms of the Fairness Agreement with LIUNA which specifically refers to only being triggered by "*across the board*" wage increases. In fact, if this discussion had actually occurred with SEIU and

been a contingency to the approval of our Fairness Agreement, we are confident the County's Employee Relations Director, Brian McArthur, with his years of experience as a contract negotiator, would have ensured it was stipulated in the County's proposal and final agreement as he did with LIUNA.

In regards to the County referring to the "*intent is evidenced by the express language of the clause which limits such increases to be applied to the same extent as others*" actually clarifies the exact point of SEIU's Side Letters. The parties intended the language to mean that if any other employee was given an increase at all, then all SEIU represented employees would be given the same, and not more than, such increase and under the same provisions. In the case of the Education Incentive, "*to the same extent*" requires the SEIU represented employee to also possess a Bachelor's and/or Master's Degree to be eligible for the premium. Additionally, the SEIU members shall not receive a greater percentage of their base pay for such premium than is being granted to the Sheriff's management employees.

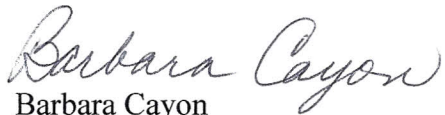
SEIU's proposals do "*not involve an absurdity*" as the County contends, but rather it is "*unreasonable and absurd*" for the County to believe SEIU would not take steps to ensure the MOU between the parties is enforced. Moreover, the legal arguments you make about absurdity do not apply to interpreting the clear meaning of the Fairness Agreement. The only relevant evidence, besides the Fairness Agreement itself, is bargaining history, which you are woefully unclear about. On the contrary, it was "*absurd*" for the County to grant wage increases and education incentives to a limited number of employees during the midst of an economic crisis without exploring the full ramifications of such a decision in light of the County's other promises, namely, the Fairness Agreement with SEIU.

For the County to state it is "*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*" leaves a sour taste in the mouths of SEIU members. This is due to the fact that the County failed to address severe compaction issues with SEIU supervisory members being paid up to 20% less than their subordinates for several years citing the depressed economic climate. SEIU members of the Supervisory bargaining unit were only provided relief from compaction during the 2010-2011 MOU when all 6,000 SEIU represented members gave up a benefit that required the County to make contributions to the SEIU supplemental pension. It is true this is a "*repugnant*" situation as the County contends, but only because the ink had not even dried on SEIU's new MOU when wage increases and additional incentives were extended to management employees under the guise of compaction.

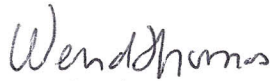
SEIU has repeatedly been refused rights or credits during their negotiations that are later extended to other employees, such as efficiencies involved with 4/10 schedules, Early Retirement Incentives, two year contracts, exclusion of departments funded solely outside of the General Fund from participating in furloughs, etc. It is in that spirit that we can agree on one point mentioned by the County that "*repugnancy in a contract must be reconciled.*" This was the precise reason why SEIU members demanded the inclusion of

a Fairness Agreement and it was also under that same spirit the Side Letters were drafted. Rest assured that SEIU will take all measures necessary to ensure all provisions of the Fairness Agreement are honored, including but not limited to taking all necessary legal actions, and pursuing the grievances we have already filed over the County's blatant violation of our Fairness Agreement.

Sincerely,



Barbara Cayon  
*SEIU Local 721 Regional Vice President*



Wendy Thomas  
*SEIU Local 721 Regional Vice President*