



January 25, 2012

Barbara Olivier
Assistant County Executive Officer/Human Resources Director
County of Riverside Human Resources
County Administrative Center
4080 Lemon Street, 7th Floor
P.O. Box 1569
Riverside, CA 92502-1569

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http://www.seiu721.org

RE: Response to County's Terms and Conditions of Employment

Dear Ms. Olivier:

As you are aware, on December 22, 2011 the Public Employment Relations Board (PERB) issued the first complaint against Riverside County (UPC# LA-CE-689-M) for refusing to provide information necessary and relevant to collective bargaining. SEIU has already filed multiple other unfair labor practice charges (UPC# LA-CE-687-M, LA-CE-688-M, LA-CE-690-M, LA-CE-693-M, LA-CE-702-M & LA-CE-732-M) related to these negotiations due to the County's Chief Negotiator's refusal to provide sufficient responses on information requests and bad faith/surface bargaining. There are several other charges pending filing.

SEIU 721 continues to maintain the parties are not at impasse in these negotiations and shall continue to request the County return to the bargaining table to participate in good faith negotiations for mutually agreed upon terms and conditions of employment for all SEIU represented classifications.

The fact that the County claims vague economic reasons for calling impasse and it's assertion that it would not be putting any "new money" on the bargaining table is highly suspect considering it put "new money" on the table for registered nurses at certain work sites after this declaration of the County's financial inability to fund any of SEIU's proposals. Since that time, the County has also put \$12 million in "new money" into a contract for the Riverside County Deputy District Attorney Association (RCDDA) thus substantially increasing labor costs even though all of SEIU's proposals were rejected due to the County's purported plan to address the County's alleged \$80 million deficit through labor savings.

I am sure you are aware the County cannot unilaterally decide that it will only negotiate increases in wages or benefits for a single job classification or bargaining unit at the Riverside County Regional Medical Center (RCRMC) and refuse to bargain for all other job classifications or

bargaining units at the same facility or elsewhere in the county. The fact that the County requested to bargain with SEIU to increase registered nurses' wages and benefits, but not any other SEIU represented employees in the County or at RCRMC, belies that the parties were not at impasse.

We believe the County team engaged in surface bargaining and then manufactured an impasse to try to avoid the implications of both AB646 and AB195 which would go into effect on January 1, 2012. Throughout these negotiations, the County team repeatedly engaged in unfair labor practices by providing SEIU with inaccurate information and/or refusing to provide requested information necessary for SEIU to carry out its duty to represent its members in collective bargaining.

On November 14, 2011 SEIU responded to the County's LBFO by submitting proposal SEIU-19. As you know, the County Board of Supervisors then met on the following day November 15, 2011. On that same day and without providing any further opportunity to discuss our proposal, Brian McArthur sent an email to me advising the union the County was declaring an impasse in the negotiations between the parties and put a new deadline on the union to accept the County's last, best and final offer (LBFO) by November 21, 2011. He warned the County would "immediately impose terms and conditions of employment on all SEIU bargaining members" in the event he did not receive "an acceptable reply to this impasse declaration." In other words, if we did not accept the County's LBFO unconditionally, even though it was only a slight variation from their original position at the onset of negotiations, the County would impose. Furthermore, it bears mentioning the County declared impasse even after McArthur acknowledged SEIU 721's last proposal had demonstrated "SEIU's willingness to lower its expectations." SEIU's proposal (S-19) exceeded the savings goals for both FY11-12 and FY12-13 which was significant movement towards an agreement. SEIU again informed the County the union was still awaiting responses to several outstanding information requests to be able to properly formulate a response.

The County's declaration of impasse was premature and legally flawed. An impasse does not exist until the parties have exhausted the prospects of concluding an agreement and further discussion is fruitless. Considering the union had made significant economic movement, especially in regards to the County's desired pension reform, the likelihood of reaching an overall agreement was clearly approaching. It is self-evident that if SEIU and the County have not fully negotiated over SEIU's last proposal and the County has not provided all necessary information - there is no bona fide impasse. Further negotiations are required for the County to fully evaluate and respond in good faith to the union's outstanding last offer, just as relevant information is required for the union to make informed decisions on its bargaining positions. SEIU has already filed a ULP over the County's unlawful declaration of impasse. It will also shortly file another ULP over the County's unlawful imposition of terms and conditions this past December prior to a bona fide impasse. When PERB finds the County and SEIU were not at an impasse, just as it did in the merit step increase case, PERB will order the County to repay the EPMC and all other imposed cuts, to the thousands of County workers affected by this unlawful imposition, with interest.

SEIU also requested the use of fact finding and mediation to assist the parties in negotiations pursuant to Section 15 of the Employee Relations Resolution No. 99-379, but again the County refused to participate in any of the impasse resolution procedures with SEIU. The County refused SEIU's request for mediation to "break the log jam." Instead the County opted to award substantial salary and benefit increases to the RCDDA's, as Board Chairman Bob Buster is quoted in The Press-Enterprise on December 19, 2011 as a way to "allow us to break the log jam here that we've got, particularly in regard to our largest unions" to "set the stage for other unions to embrace the Board of Supervisor's call for pension reform."

As you know, the County Board of Supervisors met again on November 22, 2011. Immediately following the Board's closed door session on that same day, you sent me an email advising the union the County was imposing Terms and Conditions of Employment on SEIU members. You stated "the Board of Supervisors has acted to give...authority to unilaterally impose terms and conditions of employment on SEIU represented employees."

Unfortunately, with these actions, the County Board of Supervisors violated various provisions set forth in the Ralph M. Brown Act regarding these negotiations. We now know that the Board of Supervisors met in closed sessions to consider both the declaration of impasse in the negotiations with SEIU 721 on November 15, 2011 and the imposition of a LBFO on November 22, 2011. It appears both items were discussed and *final action was taken* during those closed sessions. Government Code section 54957.6(a) allows a legislative body of a local agency to hold closed sessions with their designated representative to discuss salaries, salary schedules, or compensation paid in the form of fringe benefits for its employees; however, the purpose of these closed sessions shall be for reviewing its position and instructing their designated representative and *shall not include final action* on the proposed compensation.

Immediately following both of these Board of Supervisors meetings, the County sent correspondence to SEIU with notices of impasse and imposition. During those same November meetings, however, the Board of Supervisors failed to reconvene into open session prior to adjournment to publicly report the actions it took during the closed session portions of the meetings in violation of Government Code sections 54957.1 and 54957.7(b). What is more, the publicly available agendas of the meetings failed to identify that the County was considering a declaration of impasse or the imposition of a LBFO on SEIU. Rather, the agendas simply noted that during the closed session portion of the meetings, the Board of Supervisors would confer with you, as its publicly designated labor negotiator, regarding the various employee organizations, including SEIU 721. The agendas plainly lacked even the "brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session," as is required by Government Code section 54954.2(a)(1).

We hereby demand the County cure and correct these violations of the Brown Act, with this letter constituting a written demand under Government Code 54960.1, prior to SEIU commencing with legal action. If no action is taken within 30 days, SEIU 721 will be forced to take appropriate legal action to stop and prevent further violations, including pursuing a Brown Act lawsuit and further unfair practice charges. SEIU will seek

injunctive and declaratory relief to have the County's declaration of impasse and the imposition of the LBFO declared null and void. If SEIU is forced to take such legal action, it will also ask the court to compel the audio recording of all closed sessions as provided in Government Code 54960 to ensure such audio recordings shall be subject to discovery procedures in any civil actions.

The County's Board of Supervisors is required to take public action on any agreement, alteration, understanding, variation, waiver or modification to any of the terms or provisions of employment – as only the Board of Supervisors can fix compensation for public employees. Of course, to date no such public action has been taken. The Board cannot delegate such duty to its chief negotiator nor take any final action in closed sessions. Thus, even assuming for the sake of argument that a bona fide impasse exists, until the Board of Supervisors properly acts to declare an impasse and impose the LBFO, the County's earlier attempts at both are null and void.

You also state that “the imposed terms and conditions of employment will remain in effect until a new MOU has been negotiated, ratified, and adopted by the Board.” You unlawfully included reductions in compensation and benefits well outside of the time limits allowed for imposition.

Additionally, since the County's declaration of imposition on November 22, 2011 the County has provided SEIU with four (4) different Terms and Conditions of Employment. Each version enacts further reductions in either compensation or benefits on SEIU represented employees. You personally provided the union with the County's official terms and conditions of employment on 12/01/2011 with a document identified as the “**FINAL** SEIU Terms-Conditions 2011,” which clearly excluded tenured employees hired prior to January 9, 1992 from contributing to their pensions. On 12/13/2011, Brian McArthur sent a second version correcting what he deemed as “errors, omissions, grammatical and formatting errors that needed to be addressed” which enacted reductions in the effective dates for corrections made for salary compaction; however, the pension provision regarding tenured employees remained the same. After you signed a tentative agreement on 12/13/2011 giving the DDA's over \$12 million in increased salaries and benefits, six days later and claiming yet another “clerical error” Mr. McArthur sent a third notice to SEIU that he now intended to include the tenured employees. On 12/27/2011, Mr. McArthur sent a fourth revision to SEIU extracting further concessions. All of these revisions still contain provisions and language based upon a mutual agreement between the parties which is null and void since no such agreement has yet been reached. The County cannot impose any terms, such as those contained in Article 3, which relinquish the County from their obligations to meet and confer with SEIU over changes to any mandatory subject of bargaining.

The County also cannot lawfully just keep imposing additional terms and conditions of employment on SEIU represented employees every couple of weeks without affording the union an opportunity to negotiate over those changes.

Finally, please be advised that because of the serious and far-reaching impact of the County's unilateral changes in the terms and conditions of employment for SEIU

represented employees, absent the County's agreement to resume bargaining, SEIU will also be required to seek injunctive relief from the Public Employment Relations Board.

As previously advised, SEIU is prepared to immediately resume negotiations to discuss a mutual agreement. Please notify SEIU 721 by Monday, January 30, 2012 which course the County intends to take in this matter.

Regards,



Wendy Thomas

SEIU Local 721 Chief Negotiator