

ROTHNER, SEGALL & GREENSTONE
ATTORNEYS

GLENN ROTHNER
ANTHONY R. SEGALL
ELI NADURIS-WEISSMAN
MARIA KEEGAN MYERS
DANIEL B. ROJAS
HANNAH S. WEINSTEIN
JULIA HARUMI MASS
JONAH J. LALAS

CARLOS M. COYE
NICHOLAS H. NAVA

ELLEN GREENSTONE
MICHELE S. ANCHETA
OF COUNSEL

TELEPHONE:
(626) 796-7555

FACSIMILE:
(626) 577-0124

WEBSITE:
WWW.RSGLABOR.COM

June 29, 2023

By Email Only

Barbra Arnold
Jeffer Mangels Butler & Mitchell LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles California 90067
barnold@jmbm.com

Re: Service Employees International Union, Local 721 and the University of Southern California—Unilateral Change to Wage Increases; Demand to Bargain and Request for Information

Dear Ms. Arnold:

As you know, our office represents Service Employees International Union, Local 721 (“Local 721” or “Union”). Local 721 is the exclusive, collective bargaining representative of a bargaining unit of the University of Southern California’s (“USC” or “University”) shuttle drivers and auxiliary services dispatchers. Please consider this letter to be (1) a demand that the University cease and desist from any plan to withhold bargaining unit members’ merit/wage increases and benefits and (2) a formal request for information regarding USC’s process of determining wage and merit increases for bargaining unit members.

It is well-established that USC’s obligation to bargain with the Union begins on the date of the election vote count. *Equitable Resources Exploration*, 307 NLRB 730, 746 (1992), *enfd.* 143 LRRM 3120 (4th Cir. 1993). USC may not make unilateral changes to terms and conditions of employment regarding a mandatory subject of bargaining or changes that may impact a mandatory subject of bargaining. *See, e.g., NLRB v. Katz*, 369 U.S. 736 (1962). Indeed, during the pendency of first contract negotiations, an employer is obligated to maintain the status quo of all mandatory bargaining subjects during the course of negotiations. *See, e.g., TXU Electric Co.*, 343 NLRB 1404, 1408

(2004). Simply put, USC has a continuing obligation to notify and bargain with the Union before making any changes to the terms and conditions of employment for bargaining unit members.

Nonetheless, in recent safety meetings with Local 721-represented shuttle drivers and dispatchers, their supervisors have informed these employees that, because these employees recently unionized, they will not receive an annual wage increase until after Local 721 and USC complete contract negotiations. Troublingly, during these meetings, supervisors also informed employees that their benefit plans may be in jeopardy until the parties complete contract negotiations.

However, under USC's previous policies and practices, after bargaining unit employees receive an annual merit review/evaluation from their supervisors, employees would receive a merit increase based on their review/evaluation score. This annual merit review/evaluation, including pay increases, is an established practice regularly expected by employees as described under *United Rentals*, 349 NLRB No 83 (2007). Accordingly, the Union takes the position that for the University to unilaterally withhold wage increases would constitute an unlawful, unilateral change and a retaliatory act, i.e., clear violations of the National Labor Relations Act. *See id.*

To be clear, without waiving the right to negotiate over wages, evaluations, and other mandatory subjects of bargaining that are implicated by the annual merit review/evaluation process, the Union does not object to the University proceeding with its merit review process for pay increases and providing employees pay increase based on the merit review process. Similarly, without waiving its right to negotiate over bargaining unit members benefit plans and related mandatory subjects of bargaining, the Union does not object to USC proceeding with its continued obligation to maintain the status quo and provide bargaining unit employees the level of benefits they have regularly expected based on USC's past practices and policies.

Furthermore, the Union requests the following information that is necessary and relevant for it to participate in negotiations over potential changes to USC's practice and policy of annual merit/evaluation reviews, including pay increases, and to USC's employee benefits package for bargaining unit members:

1. For the past seven (7) years, USC's annual merit review/evaluation and wage/pay increase policies that were applicable to bargaining unit employees;
2. Copies of any current forms used to evaluate bargaining unit employees' performance;
3. Any new proposed merit review/evaluation and wage/pay increase policies applicable to bargaining unit employees;
4. For the last seven (7) years, annual merit review/evaluations for each bargaining unit employee;

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5. For the past seven (7) years, all notices and letters provided to any bargaining unit employee regarding their annual merit review/evaluation;

6. For the past seven (7) years, all notices and letters provided to any bargaining unit employees regarding any merit or pay increase;

7. Any proposed changes to USC's benefits policies applicable to represented employees; and

8. Any written communication in 2022 and 2023 between University representatives and represented employees concerning changes to bargaining unit employees' benefits.

If you have any questions or concerns, please contact me at the number above.

Very truly yours,

/s/ Carlos M. Coye

Carlos M. Coye

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