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August 4, 2023

By E-mail

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 (Housing Services Maintenance Employees)

Dear Barbra:

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”) general maintenance workers, AC Tech Module C workers, general painters, facilities technicians, customer services representatives, and material handlers employed by USC in the University’s Housing Services Maintenance Office located at 623 Childs Way, Los Angeles, CA 90089 (Case 31-RC-316966).

I am writing regarding USC’s decision not to apply its longstanding merit increase program to employees in this unit, after having initiating the merit reviews prior to the Union’s certification. Our office sent similar correspondence on June 29, 2023 regarding the shuttle drivers and auxiliary services dispatchers unit. We believe the same facts and law apply to this circumstance, and incorporate those arguments here.

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,

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by immediately restoring the planned increase with full retroactivity; and (2) a formal request for information regarding USC's process of determining wage and merit increases for bargaining unit members.

### USC's Obligation to Continue Its Longstanding Merit Increase Program

I have also reviewed the July 30, 2023 response to our letter, addressing this issue, as well as USC's letter of May 18, 2016, from its then counsel Ellen Shadur Gross. In that letter, addressing the similar merit review process applied by the International Academy, Ms. Gross stated:

As we understand controlling NLRB precedent, the use of an established merit review process for evaluations and wage increases using "reviews and other fixed criteria" constitutes "an established practice regularly expected by ... employees." *United Rentals, Inc. and International Union of Operating Engineers, Local 12, AFL-CIO*, 349 NLRB No. 83 (2007). Discontinuing the practice would constitute a violation of Section 8(a)(5) of the Act. *Id.*

Based on the foregoing, it is the University's position that it must proceed with the merit review process for pay increases and non-reappointment. We also want to ensure that negotiations for an initial contract start off on a good footing. Therefore, we ask the Union to confirm whether it agrees with our understanding of the applicable law.

The Union agrees with the above analysis as applied here, as expressed in the June 29, 2023 letter from Carlos Coye regarding the shuttle driver unit, and also believes that the reasoning of *United Rentals*, 349 NLRB No 83 (2007) specifically applies here.

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.

As such, we ask that you reconsider the position previously expressed, and inform us of your decision no later than August 30, 2023, at which time, absent resolution, we will be filing unfair labor practice charges with the NLRB regarding the unilateral change to established policies.

Request for Information

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 employees in the classifications consisting of the current bargaining unit.**

To the extent you believe this request is vague and ambiguous, please detail any vague or ambiguous aspects of the request, and in case of doubt what you believe the request covers and what parts you are unsure of. Similarly, in the event you believe the request is overbroad, please indicate in detail the reasons for such contention, including what unnecessarily "overbroad" documents you believe are covered by the request but should not be supplied.

To be clear, this request seeks any policies bearing on the above subject. In the event you contend it would be an undue burden to provide such documents, please provide all such documents you can that would not be burdensome, and an explanation of the precise burden faced that prevents further compilation of USC files;

**2. Copies of any current forms used to evaluate bargaining unit employees' performance**

To the extent you believe this request is vague and ambiguous, please detail any vague or ambiguous aspects of the request, and in case of doubt what you believe the request covers and what parts you are unsure of. Similarly, in the event you believe the request is overbroad, please indicate in detail the reasons for such contention, including what unnecessarily "overbroad" documents you believe are covered by the request but should not be supplied.

Please note that even if such forms were provided to bargaining unit members, that is not a valid defense to USC's provision of such information to the Union upon request. To the extent you believe the contrary, please provide legal authority for such claim;

**3. Any new proposed merit review/evaluation and wage/pay increase policies applicable to bargaining unit employees**

To the extent you believe this request is vague and ambiguous, please detail any vague or ambiguous aspects of the request, and in case of doubt what you believe the request covers and what parts you are unsure of. Similarly, in the event you believe the request is overbroad, please indicate in detail the reasons for such contention, including

what unnecessarily “overbroad” documents you believe are covered by the request but should not be supplied.

Please note that even if such policies were provided to bargaining unit members, that is not a valid defense to USC’s provision of such information to the Union upon request. To the extent you believe the contrary, please provide legal authority for such claim;

**4(a). For the last seven (7) years, annual merit review/evaluations for each bargaining unit employee.**

In the event you contend it would be an undue burden to provide such documents, please provide all such documents you can that would not be burdensome, and an explanation of the precise burden faced that prevents further compilation of USC files. Please note that this request seeks actual documents, not a report or list.;

**4(b). Please indicate the number of years, as a general matter, that USC keeps annual merit reviews/evaluations for employees in the classifications of the bargaining unit on file (i.e. if there is an applicable retention policy, please indicate the retention period for such documents; if not, please give the number of years based on review of files for employees in bargaining unit).**

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

In the event you contend it would be an undue burden to provide such documents, please provide all such documents you can that would not be burdensome, and provide an explanation of the precise burden faced that prevents further compilation of USC files.

In the event you believe the request is overbroad, please indicate in detail the reasons for such contention, including what unnecessarily “overbroad” documents you believe are covered by the request but should not be supplied.

Please further note that we are not seeking a “sample” of such documents, but a complete set of the documents received by employees in the bargaining unit, so that we can understand the historic practice in detail. Please further note that we do not believe any redactions (such as name or amount) to such notices or letters are justifiable, as this is presumptively relevant information to which the Union is entitled.

Please note that even if such notices and letters were provided to bargaining unit members, that is not a valid defense to USC’s provision of such information to the Union upon request. To the extent you believe the contrary, please provide legal authority for such claim;

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

In the event you contend it would be an undue burden to provide such documents, please provide all such documents you can that would not be burdensome, and provide an explanation of the precise burden faced that prevents further compilation of USC files.

To the extent you believe this request is vague and ambiguous, please detail any vague or ambiguous aspects of the request, and in case of doubt what you believe the request covers and what parts you are unsure of. Similarly, in the event you believe the request is overbroad, please indicate in detail the reasons for such contention, including what unnecessarily “overbroad” documents you believe are covered by the request but should not be supplied.

Please further note that we are not seeking a “sample” of such documents, but a complete set of the documents received by employees in the bargaining unit, so that we can understand the historic practice in detail. Please further note that we do not believe any redactions (such as name or amount) to such notices or letters are justifiable, as this is presumptively relevant information to which the Union is entitled;

**7. Any proposed changes to USC’s benefits policies applicable to represented employees.**

To the extent you believe this request is vague and ambiguous, please detail any vague or ambiguous aspects of the request, and in case of doubt what you believe the request covers and what parts you are unsure of. To be clear, this request seeks any changes to benefit policies that area applicable to employees in the bargaining unit, such as the change with respect to the merit increase program USC recently applied. If there are any other areas concerning employee benefits where USC has a current intention, or written plans, to change the existing benefits, please indicate.

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

To the extent you believe this request is vague and ambiguous, please detail any vague or ambiguous aspects of the request, and in case of doubt what you believe the request covers and what parts you are unsure of. Similarly, in the event you believe the request is overbroad, please indicate in detail the reasons for such contention, including what unnecessarily “overbroad” documents you believe are covered by the request but should not be supplied.

Please note that even if such communications were provided to bargaining unit members, that is not a valid defense to USC’s provision of such information to the Union upon request. To the extent you believe the contrary, please provide legal authority for such claim.

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Finally, please provide responsive information to the above with copies of documents in PDF form, rather than web links.

If you have any questions or concerns, please don't hesitate to contact me,

Very truly yours,

*/s/ Eli Naduris-Weissman*

Eli Naduris-Weissman

Carlos Coye

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