



The County of El Dorado
Human Resources Department
Risk Management
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August 5, 2009

Board of Supervisors
330 Fair Lane
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Dear Board Members,

Operating Engineers Local No 3 Trades & Crafts bargaining unit (Trades & Crafts) and the County of El Dorado (County) have reached an impasse on contract negotiations. The parties began negotiations on or about March 31, 2007 and have actively participated in at least 21 collective bargaining sessions exchanging and discussing proposals and counter proposals. In accordance with Article IV of the Employer Employee Relations Resolution 10-83 (EERR) the County and the Union have met to identify and specify those issues where agreement does not exist. A vote of the members was conducted by the Operating Engineers Local No 3 representatives on or about June 3, 2009. The County was notified in writing that Trades & Crafts bargaining unit members rejected the Last, Best, and Final Offer (LBFO).

The result of not obtaining a mutual agreement between the County and the bargaining unit is to move to the next step in the impasse process. Trades & Crafts has agreed to forgo mediation and proceed directly to the Board. In accordance with Article IV, Section 18.b, of the Employer Employee Relations Resolution 10-83 (EERR), the "Board of Supervisors shall take such action regarding the impasse as it, in its discretion, deems appropriate as in the public interest. Any Legislative action by the Board of Supervisors on the impasse shall be final and binding."

The Meyers-Milias Brown Act, Government Code Section 3500 et. seq., that governs impasse proceedings between a county and the union provides that "if after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its Modified Last, best and final offer, but shall not implement a Memorandum of Understanding (MOU). In other words, we can implement anything up to the Modified Last, best and final offer, but we cannot impose a complete MOU.

Recommendation

Staff recommends the Board follow the process under the Employer/Employee Relations Resolution 10-83 (EERR) Article IV, Section 18 (b) to adopt and impose the attached Resolution and the provisions of the Modified Last, Best, and Final Offer (MLBFO) between the County and the Trades & Crafts bargaining unit which have previously been approved in closed sessions. The Board does have the option to approve and/or impose only those items of the Modified Last, Best, and Final Offer presented by the County as the Board deems appropriate in the public interest. Please see Attachment 2 where the impasse process is found in the EERR under Article IV, Sections 17 and 18(b). (A complete copy of the EERR is available for review upon request)

Reason for Recommendation:

The parties have negotiated in good faith over a two year period in an attempt to reach a mutually agreed upon successor MOU. Negotiations began on March 31, 2007 and have continued through July 1, 2009. The parties recognize the economic hardship facing the County. However, we have not been able to reach a mutual agreement at this time.

Since the parties have failed to reach agreement for a new MOU after good faith efforts and mediation has not been requested by either party, the impasse procedures set forth in County of El Dorado Employer/Employee Relations Resolution 10-83 (EERR) Article IV, Sections 17 & 18, provide the last step in the impasse procedures. "The Board of Supervisors shall take such action regarding the impasse as it, in its discretion, deems appropriate as in the public interest. Any Legislative action by the Board of Supervisors on the impasse shall be final and binding."

Also, be advised that some provisions of a Modified Last, Best and Final (MLBFO) offer may not be implemented because the courts, the legislature, and/or the Public Employment Relations Board (PERB) have held that some provisions should not be implemented, or the Board may determine that it is not in the public interest to implement some provisions. We recommend that the following provisions in the LBFO not be implemented and these provisions are not included in the provisions of the Modified Last, Best and Final offer:

1. Term of Agreement

In Roland Unified School District (1994) PERB Dec. No. 1053, 18 PERC Para. 25126, 99.425, 427-428, PERB held that the duration clause in the LBFO could not be implemented because it would be a "unilateral limitation on statutory right to bargain". Similarly, under the State Employer-Employee Relations Act of SEERA, also known as the Dills Act, that covers state employees, the legislature has taken the same position in Government Code section 3517.8.

As result, we recommend the provision in regard to the term of the MOU through June 30, 2010, not be implemented because it is in conflict with the continuing obligations of the parties to bargain in good faith.

2. Fair Share Fee Provisions

The Fair Share Fees provision (also known as agency shop) is a new proposal that requires employees to join the union or pay a service fee as a condition of employment. Since this provision has not been approved by the membership, we do not recommend implementation. These provisions would require pay deductions that have not been authorized by members as generally required by law and implementation would require additional staff time. Additionally, the indemnification, duty to defend and hold harmless provision that is an important part that protects the County, may be invalidated by a court if it is determined that the provision is unenforceable in the absence of prior approval by members. In this case the voting members of the Trades & Crafts unit rejected the LBFO that included the Fair Share Fee provisions. As a general rule, dues deductions are not unilaterally made in the absence of legal authority to make deductions.

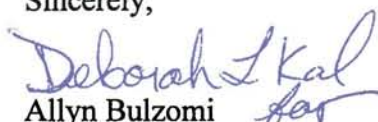
The following highlights some of those items that we are recommending be implemented by the Board as part of the MLBFO:

- Elimination of retiree health insurance for all new hires effective pay period 18, or August 15, 2009. See page 25 of the MLBFO. The elimination of retiree health insurance does not include those individuals who are the subject of a Reduction In Force (RIF) under Article 12 (page 38 of MLBFO, Status on Restoration on page 42 & 43), commonly referred to as layoff. This modification to the language was not agreed to at the bargaining table.
- Definition of overtime found in Article 7 Days and Hours of Work, Premiums & Bonuses, Section 2 Overtime, sub-section B Definition (page 7 of the MLBFO) wherein this bargaining unit will only be paid overtime for actual "Time Worked" over 40 hours in a seven day work week, commonly referred to as the federal law for overtime known as the Fair Labor Standards Act or F.L.S.A. The change excludes the use of holidays, administrative leave, vacation, compensatory time off and sick leave as "Time Worked." This modification to the language was not agreed to at the bargaining table. As clarified previously, those employees called out to work on holidays will be paid at the overtime rate.
- Article 7 on page 8, Section 2 Overtime under subsection D Accumulation and Use of Compensatory Time Off, wherein the parties agreed to standardize the maximum accumulation of overtime hours from 150 hours to 160 hours. Rather than paying overtime in cash every time someone works over 40 hours in a week, these extra hours are now available to be saved in a "bank" as time off (CTO) to be used at a later time as allowed. This modification of the language was agreed to at the bargaining table.
- Article 8 Allowances for Work Related Expenditures (starting on page 12) in the MLBFO, Section 3 Tool Allowance (found on page 14) wherein the County added the one classification of Equipment Maintenance Supervisors to the list of classifications

who receive a monthly tool allowance of \$50.00 per month. These employees provide their own tools. This was agreed to by the parties at the bargaining table.

- Article 10 Paid Leave, Section 3 Sick Leave (page 28) sub-section D 5 Usage where the County agreed to update the language in accordance with State law. This modification to the language was approved in closed session. Changed the usage of 3 days of sick leave from funeral to bereavement leave. Additionally, we included brother-in-law, sister-in-law, regular member of the house hold, and legal guardian in the definition of immediate family. This modification was agreed to at the bargaining table.
- Article 18 titled Economic Hardship wherein the County may reopen negotiations with this bargaining under certain conditions. This language would allow the County to reopen negotiations with the bargaining unit upon 30 days written notice when the County has experienced a financial shortfall. This modification of the language was not agreed to at the bargaining table.
- Medical Plan Options. There are three (3) different contribution levels for three (3) different health plans, one is the County health plan and two are for the OE3 Health Plans. Article 9, Section 1, beginning on page 19 of the MLBFO for the employees in the Trades & Crafts bargaining unit details the various contribution levels for the various plans, some of which will have the effect of saving employees and the County money. This language was agreed to at the bargaining table.

Sincerely,


Allyn Bulzomi
Director of Human Resources

Cc: Gayle Erbe-Hamlin, CAO
Lou Green, County Counsel
Deborah Kal, Sr. Personnel Analyst

Attachments:

Attachment 1: Board Resolution to Adopt Modified Last, Best, and Final Offer

Attachment 2: Employer/Employee Relations Resolution 10-83

Article IV, Sections 17 & 18 (Full EERR available for public view in hard copy on desk in front of Board chambers)

Attachment 3: Modified Last, Best, and Final Offer to be imposed, in whole or in part, as approved by the Board with the changes to wages, hours, and other terms and conditions of employment