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## Mendocino County Human Resources Department

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July 21, 2023

### VIA ELECTRONIC FILING

California Public Employment Relations Board  
San Francisco Regional Office  
1515 Clay Street, Suite 2206  
Oakland, CA, 94612-1403

**RE: Service Employees International Union Local 1021 v. County of Mendocino  
PERB Unfair Practice Charge No. SF-CE-2087-M  
Respondent's Position Statement**

The Respondent, County of Mendocino (County), is a public agency within the meaning of California Government Code § 3501(c), and employs members of Service Employees International Union, Local 1021 (SEIU Local 1021). SEIU Local 1021 is a recognized employee organization within of California Government Code § 3501(b), and is recognized by the County as an employee organization that represents employees of the County.

The County and SEIU Local 1021 are presently engaged in ongoing negotiations for a successor contract. The parties' Memorandum of Understanding (MOU) commenced July 1, 2022, and expired June 30, 2023, attached as Exhibit 1. The County has an Employer-Employee Relations Resolution (EERR) providing orderly procedures for the administration of employer-employee relations between the County and its employee organizations, attached as Exhibit 2.

The County sees the PERB Charge as 3 separate and distinct issues, and responds as follows.

### **Request to Dismiss or Amend Filing**

This Unfair Labor Charge is not proper and the County respectfully requests that the Public Employees Relations Board dismiss this filing on a procedural basis.

In the filing, under Declaration, the charging party modifies the statement as follows:

I declare under penalty of perjury ~~that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that~~ this declaration was executed on 6/20/23 at Sacramento, CA. See verification of Patrick Hickey.

The final page of the filing includes an image of a signed statement provided by Patrick Hickey, as written:

I, Patrick Hickey, am a Field Representative for Service Employees International Union, Local 1021, Charging Party in the above-entitled action. I have read the foregoing Unfair Practice Charge of Service Employees International Union, Local 1021, and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which therein stated upon my information or belief, as to those matters, I believe them to be true. If called as a witness, I could testify competently regarding the matters alleged in the Charge.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 20<sup>th</sup> day of June, 2023 at Ukiah, California

The signed statement from Hickey omits the specific language from the Declaration section that “the above charge and that the statements herein are true and complete to the best of my knowledge and belief.” The County’s position is that the discrepancy in language includes a material difference for which this Unfair Labor Practice Charge filing shall be dismissed, or require the charging party to amend the filing so as to resolve the discrepancy in the Declaration section.

**I. Threat to Change Working Conditions at the Library after Protected Concerted Activity**

The County denies the allegation that Melissa Carr, Branch Librarian and SEIU 1021-represented employee, complaining to the Friends of the Library Groups and the Library Advisory Board is considered protected concerted activity. The Friends of the Library Groups and Library Advisory Board are external groups that have no role in Library operations or the wages, hours, and other conditions of employment of SEIU Local 1021-represented employees.

Furthermore, the alleged threat to take away workspace does not affect Carr at all.

For the reasons stated, the County believes that PERB should not issue a complaint on this issue.

## **II. Classification Change Without Notice and Opportunity to Bargain**

The County denies the allegation that the County failed to provide notice and opportunity to bargain regarding transferring the classification of Branch Librarian from SEIU unit to the Management unit.

In July 2022, the Cultural Services Director contacted Human Resources asking for a review of the Branch Librarian classification for updating and minimum qualifications review. From July 2022 through May 2023, Human Resources intermittently worked on the classification with the department on the draft revisions of the classification. The result was a classification modification and title change.

In May 2023, Human Resources prepared an agenda item to be brought before the Civil Service Commission for classification specification modifications and title changes to the classifications for Branch Librarian and Branch Librarian – Non-MLS to Library Branch Manager – MLS and Library Branch Manager – Non-MLS, and to reclassify incumbents. The agenda item is attached as Exhibit 3, and referenced as Exhibit C in the charging party's filing. The Civil Service Commission agenda was published on Friday, May 12, 2023. It is Human Resources' established practice to notify SEIU when there are any agenda items related to SEIU classifications going before the Civil Service Commission. Bargaining units have the opportunity to speak to the content of classifications at the Civil Service Commission meeting during the agenda item.

On May 12, 2023, the County received an emailed request from SEIU representative, Patrick Hickey, requesting to meet and confer about the proposal before the Civil Service Commission meeting on Wednesday, May 17, 2023, regarding the Branch Librarian classification. Mr. Hickey requested that the item be pulled from the agenda pending the opportunity to request and review information, and discuss the proposal and SEIU's concerns related to it. Mr. Hickey's email did not state the specific reasons for the request for meet and confer. Later that day, Mr. Hickey sent a letter requesting to meet and confer on the proposed changes to the Branch Librarian classification which would ultimately result in the bargaining unit change from SEIU Local 1021 to the Mendocino County Management Association.

The agenda item in question was withdrawn from the May 17, 2023, Civil Service Commission meeting agenda so that this issue could be further assessed.

The proposed classification modification included a tracked change of bargaining unit in the Additional Information section added to all published approved classifications. Additional Information is included on all Mendocino County classification specifications that is a summary

of pertinent information associated with the classification specification, some of which are not under the purview of the Civil Service Commission such as: class code, FLSA status, bargaining unit, dates adopted/revised. This information is determined by the HR Director. In the draft classification specifications, this additional information also showed changes and additions, to include bargaining unit.

The established County practice for classification specification modification was being followed: Human Resources determines modifications of classification specifications, receives concurrence from the departments affected, makes recommended changes to the Civil Service Commission for approval, upon approval takes the request for approval of the classification specification to the Board of Supervisors. If there is a change in the classification salary or bargaining unit, a letter of intent is sent to the bargaining unit representative prior to the Board action to contact Human Resources if they would like to meet further on the matter.

The County is under no obligation to meet and confer regarding the proposed classification modification of the Branch Librarian. Under the EERR, Section 1. Statement of Purpose states:

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly and significantly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law. However, nothing herein shall be construed to restrict any legal or inherent exclusive County rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent agencies, departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; determine the content of job classifications; subcontract work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

The County has an obligation to meet and confer over the change in bargaining unit if requested. However, SEIU's request to meet and confer was premature, as the proposed classification modifications as drafted had not yet been approved by the Civil Service Commission. The content of the classifications are the basis of the determination of the appropriate bargaining unit assigned. Until the Civil Service Commission approves the classification modifications as presented or as changed upon direction of the Civil Service Commission, the classification modifications are not finalized and ready for meet and confer.

Under the EERR, Section 9. Policy and Standards for Determination of Appropriate Units, Subparagraph f states:

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section. The decision of the Employee Relations Officer shall be final.

For the reasons stated, the County believes that PERB should not issue a complaint on this issue.

### **III. Policy Regarding SEIU-Represented Employees' Requests to Attend Board of Supervisors' Meetings**

The County denies the allegations that the County had a long-standing practice of allowing employees to attend BOS meetings during work time without taking personal accrued leaves and without such advanced notice, Saeturn's June 5, 2023, memo announced a new policy, Saeturn's memo discriminated against employees supporting the Union or engaging in protected concerted activity, and that the County unilaterally implemented changes without providing a notice and opportunity to SEIU to bargain.

SEIU Local 1021 asserts that in a memo issued by Kao Saeturn, HR Manager for the County, on June 5, 2023, to Department Heads and Elected Officials, attached as Exhibit 4, and referenced as Exhibit D in the charging party's filing, "The memo does not apply to employees that attend the BOS meetings for any other purpose. Saeturn's new policy allows employees to continue to attend BOS meetings for purposes other than supporting the union and engaging in protected concerted activities without taking personal accrued leaves, discriminating against union supporters and employees who engage in protected concerted activities." Saeturn's memo did not relay a new policy, it only restated the County's longstanding practice.

SEIU Local 1021 misunderstands Saeturn's memo to mean that employees are allowed to attend Board of Supervisors meetings "for purposes other than supporting the union and engaging in protected concerted activities without taking personal accrued leaves..." In fact, Saeturn's memo intended to provide guidance to departments so they may act consistently in facilitating employee attendance at Board of Supervisors meetings. The County's practice is that attendance at a Board of Supervisors meeting, for any reason except approved department or County business, must be conducted on the employee's own time, meaning through either of the use of accruals or unpaid time off, and requested in advance. Board of Supervisors meetings are regularly scheduled to occur twice monthly on Tuesdays, starting at 9:00 A.M. Employees of the County regularly attend and participate in Board of Supervisors meetings for non-union purposes, and it is commonly understood by employees and departments of the County that

attendance at a Board of Supervisors meeting that is not for approved department business, is conducted on the employee's own time, and that any time away from performing work assignments is subject to advance approval by a supervisor. Requests from employees to attend Board of Supervisors meetings for non-department or County business are regularly made and approved with short notice. This practice applies regardless of an employee's membership in an employee organization, pertains to all items that go in front of the Board of Supervisors, and is not limited to the reasons of "supporting the union and engaging in protected concerted activities."

SEIU Local 1021 asserts "Saeturn's memo only applies to SEIU-represented employees that wish to attend BOS meetings to express support the Union and engage in other protected concerted activities." The County interacts with eight (8) unions and employee organizations and Saeturn's memo addresses employees across all employee organizations. Saeturn's memo does not name SEIU Local 1021 or any particular employee organization, only referencing employee organizations in general. At the time of Saeturn's memo, the County was engaged in ongoing negotiations for successor contracts with four (4) other employee organizations, and Saeturn's memo addresses all employee organizations.

On June 5, 2023, Saeturn issued a second and separate memo five (5) minutes after the first memo, attached as Exhibit 5. This memo provided guidance specific to two departments with employees that served in SEIU Officer roles authorized to attend Board of Supervisors meetings as paid release time per MOU Article 4.15, and was intended as guidance for the departments to act in compliance with SEIU Local 1021 rights. These two departments employed the SEIU Local 1021 Mendocino Chapter President, and their likely designee, the Vice President. MOU Article 4.15 Union Release Time Bank states:

Additionally, the County shall grant up to 8 hours per month of paid release time for the president or other designee on the executive board of the bargaining unit, to attend meetings of the Board of Supervisors whenever an agenda item affects the Union or bargaining unit employees. The Union president or executive board designee shall provide notification in writing to his/her appointing authority or designee prior to attending the Board of Supervisors meeting with as much notice as possible. The appointing authority or designee has the right to deny the release time for operational reasons in which case a different executive board member may be designated.

Saeturn's two June 5, 2023, memos were issued in response to specific requests for guidance from departments that had received requests from employees to attend an upcoming Board of Supervisors' meeting scheduled for June 6, 2023.

On June 5, 2023, at 10:12 AM, Hickey initiated an email exchange with Saeturn. Hickey wrote:

If any employee is discouraged or prevented from attending the Union Action at the Board of Supervisors meeting tomorrow, this will constitute an Unfair Labor Practice against the employee's right to engage in Protected Concerted Activity.

While it is not our intent to be disruptive and we have suggested that employees notify their supervisors about their participation, they are under no obligation to do so, unless doing so would constitute an imminent threat to public health. Please correct this directive.

In the email reply at 12:28 PM from Saeturn to Hickey, Saeturn wrote:

The notice to departments did not include any suggestion or direction to discourage or prevent any employee from attending a Board of Supervisors meeting, nor did it not state that any employee was required to notify their supervisor they will be attending a BOS meeting or participating in any concerted activity. The County has no desire to discourage or prevent any employee from attending a BOS meeting or participating in any concerted activity.

Please don't read into this notice to departments for more than it is. Departments received requests from employees disclosing they would be attending an upcoming Board of Supervisors meeting, and requested guidance specific to this topic. The message in this email is to departments that if an employee states that they plan to attend a BOS meeting, this activity must be conducted on the employee's own time, unless it is during the employee's regular break or lunch, and requested in advance. The departments have a duty to serve the public, but any requests will not be unreasonably denied.

A true and correct copy of the June 5, 2023, email exchange between Hickey and Saeturn is attached as Exhibit 6.

SEIU Local 1021 asserts "Prior to Saeturn issuing the June 5 memo, the County had a long-standing practice of allowing employees to attend BOS meetings during work time without taking personal accrued leaves and without such advanced notice." The County did not engage in making any unilateral changes, and in fact, only clarified the County's established practice for departments.

SEIU Local 1021 asserts that "The County did not provide the opportunity to SEIU to meet and confer over Saeturn's memo before it was implemented." The County did not implement a change in policy and was under no obligation to meet and confer, and Hickey made no mention or request to the County to meet and confer over this alleged new policy.

SEIU Local 1021 asserts that employees have been allowed to attend BOS meetings during work time without taking personal accrued leaves and without such advanced notice.

Hickey contradicts this assertion in an email to Mendocino County Chapter SEIU Local 1021 members on May 29, 2023, one week prior to Saetern's memos. Hickey wrote:

We have a right under California Labor Law to work collectively to address our workplace concerns, so we are protected doing this on work time. To be paid for the time you may need to request PTO or vacation time, but you can attend regardless.

SEIU Local 1021 asserts the Saetern memo as the County making "unilateral changes," when in fact, as recently as the week prior to the Saetern's memos, Hickey's email demonstrates his understanding to be in line with the County's practice as stated in Saetern's June 5, 2023, memos.

A true and correct copy of Hickey's email is attached as Exhibit 7.

At no point prior to this Unfair Practice Charge had Hickey informed the County that an alleged change in policy had taken place, nor did Hickey request to meet and confer. In fact, ten days after Saetern's memos, Hickey communicated a policy consistent with the County's direction as stated in Saetern's memos. On June 15, 2023, in an email blindcopied to Mendocino County Chapter SEIU Local 1021 members, Hickey wrote:

We have a right under California Labor Law to work collectively to address our workplace concerns, so we are protected doing this on work time. This will not be paid time unless you request PTO, vacation or ask to flex your hours, but it is important that we have all hands on deck.

The language change between Hickey's two emails demonstrates Hickey's understanding that attending Board of Supervisors meetings is only on paid time is consistent with Saetern's memos.

A true and correct copy of Hickey's email is attached as Exhibit 8.

For the reasons stated, the County believes that PERB should not issue a complaint on this issue.

### **Request for Dismissal of Charges**

The County denies SEIU Local 1021 allegations, inclusive of bargaining in bad faith, failing to provide the Union with a true opportunity to meet and confer over the aforementioned unilateral changes, unilaterally implementing such changes, discriminating against Union supporters, and interfering with protected rights of public employees and the Union.



For the reasons stated above, the County believes PERB should not issue a complaint.

**DECLARATION**

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on July 21, 2023, at Ukiah, California.



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