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February 25, 2020

Kathleen Mastagni Storm
Mastagni, Holdstedt, Amick, Miller & Johnsen, APC
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Ms. Storm,

This letter is in response to your February 24th, 2020 letter regarding the expiration of the contract between SUPA and the CSU. I will try to address all of your pertinent comments and concerns, starting with your opinion that SUPA prevailed on the major issues presented at fact-finding. I would like to point out that the fact-finder's recommendation for the first two years' salary is identical to CSU's post-impasse offer to SUPA. Had SUPA accepted that offer, the contract would not currently be expired, and we would be in bargaining over the third year, which would start on July 1, 2020. This point is critical for the reasons discussed below.

Your assertion that allowing contract provisions that are explicitly precluded from continuing after expiration is somehow a form of retaliation is lacking in basis. Your client, SUPA, and the CSU bargained in good faith for the now expired contract, and provisions were agreed to that precluded certain items from continuing after expiration of the contract. CSU is simply following that mutually agreed upon language. Specifically, Articles 21.4 and 21.23 of the contract, to which SUPA, agreed state "[t]his provision shall not continue after the expiration of this contract unless the parties agree during successor bargaining to continue this provision." Article 21.18 states that the shift differential authorized under that provision "will not extend beyond the expiration of this Agreement on June 30, 2018 without the express written agreement of the parties. Pursuant to the parties' most recent extension, the CBA was to expire ten (10) days after the issuance of the report, which set expiration as February 22, 2020.

It is true that the contract was extended for nearly two years which allowed those items to remain in effect during those extensions. CSU did not propose eliminating the contract provisions that are in question, but more importantly, we did not propose, and neither did you, to continue those provisions after expiration. The actions identified in my February 19, 2020 letter could not be, as you referred to them, "punitive economic actions." Rather, the provisions identified in my February 19, 2020 letter were self-executing. Indeed, as the cessation of those provisions were self-executing, my letter was not required; it was sent merely as a courtesy to remind you of the agreed-upon terms.

CSU Campuses

Bakersfield
Channel Islands
Chico
Dominguez Hills
East Bay

Fresno
Fullerton
Humboldt
Long Beach
Los Angeles
Maritime Academy

Monterey Bay
Northridge
Pomona
Sacramento
San Bernardino
San Diego

San Francisco
San José
San Luis Obispo
San Marcos
Sonoma
Stanislaus

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You also stated in your letter that “Throughout negotiations and fact-finding, the CSU never proposed eliminating any of the benefits enumerated in your February 19, 2020 letter.” We may not have “proposed” eliminating these items “throughout negotiations,” but nor were we required to propose eliminating a term to which the parties previously agreed. Significantly, after having agreed that these provisions would cease once the contract expired, SUPA never proposed extending them. Furthermore, several of the items were explicitly contemplated in the last extension that Corporal Solomon signed on October 31, 2019. Item 3 of that extension states the following:

“This contract extension expressly extends the \$2.20 shift differential in Provision 21.18, the Experience Step Increase in Provision 21.30, the Compensatory Time Off in Provisions 13.17 and 13.18, and Article 7, Grievance Procedure until one of the conditions outlined in paragraphs 1 or 2 above are satisfied.”

It is worth noting that paragraphs 1 and 2 mentioned in the italics were not met, leading to this expiration.

For the above reasons, your contention that CSU is taking unilateral action is unfounded. On March 24, 2015, we agreed that certain terms of the CBA would expire with the expiration of the CBA. These terms include Provisions 21.14—In Range Progression; 21.18—Shift Differential; 21.23—Special Assignment Stipend; and 21.30—Experience Step Increase. As of February 22, 2020, the CBA has expired, and thus we are simply honoring the parties understanding that the above referenced provisions expired along with the expiration of the CBA. We will be processing the changes as understood by the parties.

Regarding your position that “obligations under an arbitration clause survives contract termination,” we understand that there are limited situations where a grievance filed after a CBA expires could still be eligible for arbitration. We will evaluate all grievances filed after expiration on a case-by-case basis.

In regard to Article 13, sections 13.17 and 13.18, pertaining to compensatory time off (CTO), it is not simply a matter of maintaining the status quo, this as an issue of compliance with the Fair Labor Standards Act. In order to allow employees to accrue CTO, an agreement must be in place. Due to the expiration of the contract, there is no agreement in place.

As always, we remain willing and ready to engage in meaningful dialogue and negotiations in the interest of harmonious labor relations.

Sincerely,



Steve James

Chief Negotiator/Employee Relations and
Collective Bargaining Expert
Labor & Employee Relations

CC:

Stephen Leonesio, Labor Relations Consultant, Mastagni, Holstedt, APC
Cpl. Jeff Solomon, President, SUPA