



MINUTES

Santa Clara County Health Authority
Governing Board Special Meeting

Tuesday, June 2, 2015
4:00 PM

210 E. Hacienda Avenue
Campbell, CA 95008

Notice of Teleconference

VIA TELECONFERENCE AT:
Lucile Salter Packard Children's Hospital
Suite 150 Conference Room
770 Welch Road
Palo Alto, CA 94304

VIA TELECONFERENCE AT:
EMQ FamiliesFirst
251 Llewellyn Avenue
Campbell, CA 95008

VIA TELECONFERENCE AT:
Residence
1985 Cowper Street
Palo Alto, CA 94301

VIA TELECONFERENCE AT:
Sobrato Center for NonProfits – San Jose
1400 Parkmoor Avenue, Suite 120B
San Jose, CA 95126

VIA TELECONFERENCE AT:
Planned Parenthood Mar Monte
1605 The Alameda
San Jose, CA 95126

Board members present:

Ms. Kathleen King
Ms. Melinda Landau
Ms. Michele Lew
Ms. Dolores Alvarado
Dr. Waldemar Wenner
Mr. Paul Murphy
Mr. Bob Brownstein

Board members via Teleconference:

Mr. Christopher Dawes
Ms. Liz Kniss
Ms. Laura Jones
Mr. Darrell Evora
Ms. Linda Williams

Board members not present:

Ms. Jolene Smith

Others present:

Ms. Elizabeth Darrow, Chief Executive Officer
Mr. Dave Cameron, Chief Financial Officer
Ms. Sharon Valdez, VP, Human Resources
Ms. Christina Ohara, HR Supervisor
Mr. Richard Noack, Hopkins & Carley LLC

Members of the public present:

Stacey Renteria
Cesar Mata
Caitlin Grandison
April Pitt
Albert Carlson

1. Roll Call

Chairman Lew called the meeting to order at 4:05PM. Roll call was taken and a quorum was established.

2. Public Comment

Ms. Stacey Renteria an employee of SCFHP for 9 years addressed the Governing Board and the Executive Team; stating she was here to ask the SCCHA Governing Board and the Executive Team to respect the decision to Unionize and recognize the Union today. We know that quality services also require quality jobs and we look forward to working with you as we move forward in this process. I'm also proud to tell you that the workers of the Health Plan have come together to say that we need a voice at work and we ask that you respect us and that there's a fair process to organize and to that end we request and agree to a formal neutrality agreement today.

Ms. April Pitt an employee with SCFHP for 13 years addressed the Governing Board and the Executive Team; stating she was here to ask that you respect the decision to Unionize and recognize the Union. Over the last few weeks I've spoken to dozens of my coworkers about having a voice in the work place. Across departments what I've heard over and over again is that my coworkers want respect for the important work we do for our members. Respect means fair and equitable rules for all of us, and a seat at the table making the decisions that impact the work we do and the services we provide. SEIU is the largest Healthcare Union in the State and the County and is a strong advocate for improving healthcare for all residents. They represent thousands of workers in healthcare. SEIU 521 represents members who do Medi-Cal eligibility and case management work at Valley Medical Center, County Behavior Health and Public Health, Valley Health Plan and health related and community based nonprofits in the county. The law is clear, the law allows us to decide whether or not to form a Union with our coworkers and we have already decided. We urge you to respect our decision and recognize our Union without delay.

Mr. Cesar Mata spoke on behalf of Ms. Llecenia Solorio, an employee with SCFP. Stating that she wanted to be here but she was not able to schedule the time. She asked Mr. Mata to read a brief message on her behalf. Stating she would ask that you respect our decision to Unionize and recognize the Union. As you know SCFHP we strive to serve our community in the spirit of care. Every day we the workers of SCFHP strive to provide the best services and to treat our clients with dignity and respect. By supporting our efforts to form a Union through agreeing to neutrality on all things related to the Union you will show us that you believe we deserve dignity and respect as well. We want to continue providing the highest quality of service but to do so we need quality jobs and a fair contract at work. We look forward to, as SEIU members, working with you to build a stronger health plan.

3. Action Item: Review and consider memo to Santa Clara County Health Authority Employees from the Governing Board regarding SEIU Local 521 attempting to become the bargaining representative of Santa Clara County Health Authority employees and to delegate authority to Michele Lew, Chairperson of the Board, to execute memo on behalf of the Board.

Ms. Lew, Chairperson, stated the first action item is to Review and consider the memo to Santa Clara County Health Authority Employees from the Governing Board regarding SEIU Local 521 attempting to become the bargaining representative of Santa Clara County Health Authority employees. Ms. Lew introduced Mr. Noack from Hopkins and Carley LLC; legal counsel on these issues, to give an introduction as to the material being presented to the Board.

Mr. Noack, legal counsel, stated the memo was requested by SEIU. The Executive Team reviewed the memo and made some contextual changes and as a result has come up with this draft for the consideration by the Board. It supports the commentment to maintain neutrality by management.

Mr. Brownstein, Board member, asked what the law states in regard to the way in which workers can choose a Union to be their bargaining representative. Is there any other option either suggested or required under State law?

Mr. Noack responded that SCFHP is a public agency, it's a Joint Power of Authority created by the County of Santa Clara which is covered by the Meyers-Milias-Brown Act (MMBA); the statute gives cities and counties, the primary entities covered by the MMBA, the ability to create small employer/employee resolutions, which would be small bargaining statutes on their own and there is a provision that authorizes that. This particular agency appears not to have an employer/employee resolution. The traditional way of having a Union recognized by a public agency would be to provide for a request for recognition, which needs to be filed with the Public Employment Relations Board and accompanying that request for recognition would be a sufficient showing of interest in an appropriate bargaining unit; the Public Employee Relations Board would establish a procedure for an election. To determine whether the proposed bargaining unit is appropriate under the law, that requires looking at the classifications and whether they share a community of interest. The Meyers-Milias-Brown Act in 2001, added a provision allowing for an employer organization to achieve recognition based on the submission of a sufficient number of authorization cards which usually have a signature line, a printed name line and date, and simply says, "I authorize the Service Employees International Union Local 521 to represent me in my labor relations with my employer." In 2001 a change to the statute provided once there was sufficient showing of interest, more than 50% of the employees, in an appropriate bargaining unit, the Public Agency would need to automatically recognize the employee organization and so an election would not be required.

Mr. Brownstein, Board member, asked if some demonstration of sufficiency of interest less than 50% triggers an election. Mr. Noack responded yes, the minimum standard is 30% and the standard on all the Bargaining Statutes in California which is consistent with the private sector and under the National Labor Relations Act. Mr. Brownstein also asked if less than 30% is insufficient, 30%-50% is sufficient and triggers an election over 50% generates recognition? Mr. Noack responded that's correct. Ms. Lew asked if that is 50% of all the employees.

Mr. Noack responded it would be all employees in an appropriate bargaining unit, there are specific rules about what is an appropriate bargaining unit. California has a law which is part of the MMBA, which states certain professional employees and they've identified those professional employees to include doctors, nurses, lawyers, engineers, architects and any State employee have the right to be represented separate from all other employees. There are rules under the MMBA about containing supervisory level employees in the same bargaining unit of those employees they supervise, because it creates an inherent conflict of interest.

Mr. Dawes, Board member, asked if there's more than 50% of the cards signed representing the entire group that would be potentially eligible, does this employer still have an option for asking for a secret ballot election or is it automatic that SCFHP accept the Unions presented.

Mr. Noack responded the 2001, statute suggest that if more than 50% of the employee's in appropriate bargaining unit have signed there would be recognition. The MMBA states that after the representation petition is posted and no other employee organizations are claiming to represent the employees in that bargaining unit the petitioning employee organization would be the only entity on a ballot and they have more than 50% of the employees in the bargaining unit they can cancel the election and go forward with an automatic recognition. If there were other Employee Organizations there would need to be an election if they represented 30% of the employees in the bargaining unit, at which point a determination would be made whether a majority was interested in one particular representative.

Ms. King, Board member, asked if the pledge cards have gone through all the steps. Mr. Noack replied that a representation petition has been filed by the Service Employees International Union, Local 521 with the Public Employment Relations Board. SCFHP has received a copy of the petition which does not indicate a showing of interest except on the petition itself; however there is a check at the 50% box. They requested to meet with SCFHP to pick a neutral 3rd party to look at the authorization cards or the showing of interest to determine whether there is a sufficient amount which they believe they have collected greater than 50% and have listed as an attachment all position titles they claim should be part of the bargaining unit. The determination as to whether or not the proposed bargaining unit is appropriate still needs to be confirmed because some professional level employees have been included, and there are positions that have been identified with either coordinator or manager in their title and so additional information is required in order to determine whether or not they should be excluded from the bargaining unit because of a Conflict of Interest.

Mr. Murphy, Board member, asked if Mr. Noack had any idea whether it is 51 to 100%. Mr. Noack responded they have identified 97 people in the bargaining unit that would indicate they have more than 50 cards or showings of interest that have been signed by current employees, but could not determine whether it is 50 or 96%.

Ms. Kniss, Board member, asked to clarify if the number of signatures exceeds 50%? Mr. Noack replied there is no evidence because that would not be submitted with the Representation Petition to the employer, it goes directly to the Public Employee Relations Board. Ms. Alvarado, Board member, asked what the current total number of employee's is and Ms. Valdez, VP of Human Resources, responded approximately 141. Ms. King, Board member, asked if this could be immaterial if they've already gotten 50% or greater pledge cards.

Mr. Noack responded the next step is to determine whether or not there's an appropriate bargaining unit identified and the employees within the bargaining unit share a community of interest and this is usually done through the auspices of the Public Employment Relations.

Mr. Brownstein, Board member, inquired if SEIU Local 521 has indicated they want to meet with SCFHP and discuss the sense of the bargaining unit. Mr. Noack responded the letter received was a copy the attorney for Local 521 sent to the Public Employer Relations Board and they will be contacting the employer to determine whether or not they can select a neutral third party. In the event it's impossible to find a neutral third party the State Conciliation Service would appoint somebody to review the cards and make sure they are correct.

Ms. Lew addressed the memo presented to the Board which requires some edits and suggested that those changes be raised now.

Ms. King, Board member, inquired if SCFHP was required to allow employees to meet on campus? Mr. Noack responded traditionally employers are not required to allow Union meetings on site until an exclusive representative has been determined. Ms. Darrow added that SCFHP would be happy to assist in scheduling a location to meet as long as it does not interfere with normal working hours. SCFHP would be more than happy to make the building available before work, after work, during break times, and during lunch time.

Mr. Dawes, Board member, supports the letter as written. Ms. Jones, Board member, inquired whether this was reviewed by Mr. Noack or another attorney as appropriate and Ms. Darrow responded yes it was.

Mr. Murphy, Board member, had a couple of edits that would not change the content or the intent of the letter. First, spell out PERBS because not everyone knows what that is and second the third paragraph, which says "we will promptly investigate any reports of intimidation of employees" what's the obligation of an entity to act in the disciplinary manner because investigate means you're going to look into something not necessarily do anything if it was happening.

Mr. Noack commented this is a question concerning representation; there are protections provided under the law for retaliation against employees who have advanced the cause of the Union. The reality is there will be conversations between employees who have differences of opinions and we want to make sure those individuals are treated respectfully on all sides of the issue. Mr. Murphy, Board member, commented that the only other suggestion would be to consider adding a sentence that says, "We thank you for your service at SCFHP and the members we serve."

Mr. Brownstein, Board member, made two suggestions regarding the letter. First in the second paragraph delete the second clause in the sentence that begins with "Nevertheless, whether SEIU Local 521 would be good for you is for you to decide" add a period there and delete the section about the election, since State law apparently indicates if a majority of workers have signed cards an election is not required. Mr. Brownstein's position is that we act in accordance with State law. Secondly delete everything after the first sentence in the first paragraph, as an institution we can make it attractive and easy to communicate in the workplace assuming people won't bother them at home.

Ms. Alvarado, Board member, inquired what the purpose was in opening the letter with that comment. Ms. Darrow responded that SCFHP had feedback from some employees that they were surprised when someone

came to their home on a weekend. Ms. Landau thought it important that SCFHP let the employees know that this information did not come from SCFHP. Mr. Dawes, Board member, agreed, but thought it was important for the reason just stated the first and second paragraphs remain as is. Mr. Dawes perspective is to leave it as is but in order to get this approved we need to be clearer about the process.

It was moved and seconded to accept the memo. **Mr. Brownstein** motioned to amend the memo.

Ms. Lew suggested that perhaps someone would entertain amendment motion to allow her as the Board Chair to refine the letter based on these discussions

Mr. Brownstein, Board member, moved to add an amendment to the letter that says “Nevertheless with SEIU Local 521 would be good for you to decide.” Then it would go on to say under State law if more than 50% of the employees sign authorization cards that SCFHP will recognize Local 521 as a Bargaining Unit and if less than 50% sign the cards then an election may be required. Mr. Dawes, Board member, supported that with the exception of making it less than 50% but more than 30%. Mr. Brownstein agreed. Ms. Kniss, Board member, agreed as well and suggested delegating authority to Ms. Lew as Chair of the Board to look at the language and be sure that the essence of what we discussed is captured. Ms. Lew responded in order to move forward we would need a formal motion. Mr. Dawes stated that he would amend his motion to incorporate the modifications to paragraph two described by Mr. Brownstein with the addition of the comment he made about more than 30%. He then added to that motion that the final review is delegated to the Chair of the Board to finalize and execute the letter. Ms. Kniss seconded the motion.

Mr. Dawes, Board member, responded to the issue around the first paragraph and would be fine with the motion he made to remove the specific reference to knocking on doors, but thinks it should be stated we recognize the importance of people’s privacy and we want to assure them that we have not provided their home address or telephone number to any third party. Ms. Kniss, Board member, responded we haven’t now but we wouldn’t want to if we’re about to provide it as a result of the later agenda item. To that Mr. Dawes responded this is what he would put in the letter and then we can go to the next item and if we need to change it then we’ll do so accordingly. Mr. Dawes went on to say we need to acknowledge that in this letter. Ms. Kniss agreed.

It was moved, seconded, and approved to delegate authority to Michele Lew, Chairperson of the Board, to execute memo on behalf of the Board.

4. Action Required: Review and consider Neutrality Agreement and Recognition Procedure (Agreement) between SEIU Local 521 and Santa Clara Family Health Plan

Mr. Noack explained the difference between this document and what was just approved to the Governing Board and Management. He stated in the absence of an employer/employee resolution, which has certain procedural and substantive rights regarding labor relations for the Joint Powers of Authority, and the default would fall to the Meyers-Milias-Brown Act (MMBA). This Neutrality and Recognition Procedure is a process that has been proposed by the Union and would require that the agency here go further than its legal obligation under the MMBA. We also need to begin having discussions with the employer organization on the process for choosing a neutral third party. It also suggests that the employer would be endorsing the efforts of the Union as a result of this Neutrality Agreement, which is different than taking a neutral position, and there is no legal requirement for the employer to have such a neutrality procedure. Mr. Noack also recommended following the rules as they exist.

Mr. Brownstein, Board member, inquired as to what the specific points are in this Neutrality Agreement that have the effect of having the agency not only agree to be neutral but endorse the Union’s position. Mr. Noack responded as noted previously he has not gone through the material specifically other than to note there were instances in which it was going beyond the requirements of the law. There are other provisions that are provided by the MMBA which are covered by State Law, for instance agreeing not to discriminate or retaliate against individuals who are involved in the organizing effort. There are provisions that include how the third party is to be selected and how that process is going to work. There needs to be substantive discussions once the determination of the existence of an appropriate bargaining unit has been agreed on.

Mr. Dawes, Board member, commented if there are already provisions in the State law that speak to issues around card check procedures, protecting employees' rights and so forth, then there really is no need to adopt this Neutrality and Recognition Procedure proposed by the Union, is that correct? Mr. Noack responded yes, the letter the Board just approved had a statement about remaining neutral, and neutral does not include endorsement and does not necessarily include enhancing the rights already guaranteed under the law. There needs to be substantive discussions either between the employer and SEIU or in the context of the process with the Public Employment Relations Board about how the card check process is going to take place. Mr. Dawes stated it does not appear we need to proceed any further, it's premature at this time and until there has been a meeting and we get the letter out there doesn't seem to be a need at this point in time for this document.

Dr. Wenner, Board member, made a motion to table the Neutrality and Recognition Procedure for further discussion outside this meeting, it is a relatively complex situation and we are not in the position to make a decision on it today. Ms. Kniss, Board member, seconded the motion.

Mr. Brownstein, Board member, strongly believed that a neutrality procedure was necessary and the entire tenor of Labor Law in the United States which ensures guarantees to protect workers against intimidation and retaliation. Mr. Brownstein understood Dr. Wenner's point about the fact there are multiple eliminates to this so he would be inclined to consider this proposal if there was a process and timeline set to deal with the issue. Mr. Brownstein would be willing to table the issue if we were to create a process that would direct Ms. Lew, Chairperson and Ms. Darrow, CEO, to meet with SEIU to discuss the contents of this and bring this back to the Executive Committee within a reasonable period of time.

Dr. Wenner, Board member, responded that he wished to table this. Mr. Brownstein, Board member, commented the problem with Tabling is there won't be another Governing Board meeting for three weeks and that's a problem? Mr. Dawes, Board member, doesn't understand the rush, but thinks SCFHP Management Team needs to meet with the Union and go through those conversations and then we can come back to this. But Mr. Dawes can't support forcing a review of this again and thinks it's a matter of seeing what happens over the next couple weeks and at which point we can take this up at the next Board meeting, scheduled for June 25th, if necessary.

Dr. Wenner, Board member, asked if the motion to Table was up for discussion and also asked if it was an appropriate discussion because his understanding is a motion to Table a discussion is a yes or no response. Ms. Kniss, Board member, responded that once a motion to Table has been made then that item is no longer discussable.

It was moved, seconded, and approved to Table the Neutrality Agreement and Recognition Procedure. **Mr. Murphy, Mr. Brownstein and Ms. King** opposed.

5. Action Required: Review and consider public information request from SEIU Local 521 for home address information of Santa Clara Family Health Plan employees

Mr. Noack reported the SCFHP received from SEIU Public Records request under the Public Records Act to provide four items of information, all of which are considered to be Public Record and so SEIU would be entitled to the information with the exception of the home addresses and home phone numbers of employees..

1. Any SCFHP policy or ordinance governing employer-employee relations, such as an Employee Relations Ordinance
2. Current Salary Schedule
3. Current list of all SCFHP staff including their job class, email, home address, phone number, department, worksite location and hire date
4. Job description for all full-time and part-time positions

Mr. Noack responded to a question regarding email addresses and stated that SCFHP probably has an email convention which would be considered Public Records. In recognizing the representative process there is a provision in the law where at some point in time the employer would be required to supply the home

address not the home phone number of the employees within an appropriate bargaining unit. Mr. Noack stated that this would be part of the representative process and it would include when the employer is required to give an Excelsior List, which is a list of employees in the proposed bargaining unit. At this point in time there doesn't appear there's a public act requirement that requires that SCFHP supply the home addresses and home phone numbers and its Mr. Noack understanding that SCFHP would be protected by the Right to Privacy Act.

Mr. Murphy, Board member, asked what are the requirements to share information and are you aware of requirements for a public agency. Mr. Noack responded that within the Public Records Act public employee addresses of specifically identified entities, for instance Police Officers, District Attorneys, Public Defenders, Judges any State employee that the Union would be entitled to home addresses of all those kinds' of employees in order to satisfy their ongoing statutory obligation of representing the individuals within the bargaining unit. There is a provision in the Public Records Act stating the privacy interest versus the public interest has to be waived.

Ms. Lew stated that the action before us was to comply with the Public Records Act request and the possible action is to authorize the release of home addresses.

Dr. Wenner, Board member, asked if this release of addresses applies to people who are Union members or does it apply to all employees? Mr. Noack replied it only applies to those employees within the appropriate bargaining unit. Dr. Wenner also asked about employees who didn't join the Union? Mr. Noack responded that if SEIU Local 521 is recognized as the representative of the employees of a bargaining unit each of those employees in that bargaining unit are going to need to make a determination whether they are going to join or not. The people who choose not to join may still need to be contacted by the Union because they have a statutory obligation to represent them, they just don't represent their members they represent all the employees within the appropriate bargaining unit. In the event that was an agreed upon term between the Union and the employers, non-members could be required as a condition of employment to pay a service or agency fee to the Union. There are communications that have to happen between the Union and even non-members within the bargaining unit they represent.

Mr. Dawes, Board member, made a motion to support what Mr. Noack stated, we cannot provide item one, we can provide the salary schedule and the job description as well as the information listed in item three with the exception of the home email, home address and home phone number. Mr. Dawes motioned that we go ahead with the proposed request for information as described. Dr. Wenner, Board member, seconded the motion. Mr. Brownstein, Board member, agreed to accept the motion with two amendments; one, which the Board does this with the full confidence the CEO and the Management Team will provide opportunities for the Union to meet with employees at the worksite. Second, it's done without prejudice on any further decision we make regarding the release of information later in the process. Mr. Dawes concurred with Mr. Brownstein.

It was moved, seconded, and approved to accept the Public Information Request from SEIU Local 521 and not to include home address information of Santa Clara Family Health Plan employees

Ms. Lew noted that the Governing Board and SCFHP Management Team have ten days from the date of request to comply with the Public Records Act.

6. **Adjournment**

It was moved, seconded, and approved to adjourn the meeting at 5:15 PM.

Elizabeth Pianca, Secretary to the Board