

PORT OF OAKLAND
LABOR PEACE RULE FOR CERTAIN OPERATIONAL SERVICES

I. PURPOSE

The Board of Port Commissioners, consistent with the findings set forth in its duly adopted Ordinance that it is essential for the protection of the Port's proprietary and financial interests, adopts this Labor Peace Rule for Certain Operational Services (as defined below) mandating that Operators and Labor Organizations agree to enter into and abide by Labor Peace Agreements in the circumstances specified below.

II. DEFINITIONS

Whenever used in this Rule, the following terms shall have the meanings set forth below.

- (A) **"Board"** means the Board of Port Commissioners of the City of Oakland.
- (B) **"Department Director"** means the Director of the Department at the Port for which the Operational Services Agreement is intended to serve.
- (C) **"Executive Director"** means the Executive Director of the Port.
- (D) **"Labor Disruption"** means any economic action or concerted activity, including, without limitation, strikes, picketing, handbilling, boycotts of, or other interference with: any activities on Port property, the Port, or an Operator or its activities under an Operational Services Agreement.
- (E) **"Labor Organization"** means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with Operators concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (F) **"Labor Peace Agreement"** means a written agreement between an Operator and a Labor Organization that prohibits a Labor Organization, its members and any employees represented by the Labor Organization from engaging in any Labor Disruptions relating to the services provided to the Port under an Operational Services Agreement: (1) during any organizing, membership drive, or negotiation of a collective bargaining agreement; and (2) during the entire term of the Operational Services Agreement in the case where the Labor Organization has entered into a collective bargaining agreement with the Operator.

- (G) **“Operational Services Agreement”** means an agreement between the Port and an Operator selected pursuant to a Request for Proposal to provide primarily the following services:
1. Automobile and/or truck tractor parking services;
 2. Security guard services;
 3. Janitorial services for Port buildings; and/or
 4. Comprehensive building engineering and maintenance services for Port buildings through full-time personnel.
- (H) **“Operator”** means all individuals and businesses operating under, or seeking to enter into, an Operational Services Agreement.
- (I) **“Port”** means the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, otherwise known as the Port of Oakland.
- (J) **“Request for Proposal”** means any formal request for proposal issued by the Port for an Operational Services Agreement in accordance with the Port’s Purchasing Ordinance (Port Ordinance No. 4321, as it may be amended or superseded).
- (K) **“Rule”** means this Labor Peace Rule for Certain Operational Services.

III. REQUIREMENT TO KEEP LABOR PEACE AND PREVENT LABOR INTERRUPTIONS

(A) **Operator Duties**

- (1) Prior to entering into an Operational Services Agreement, an Operator shall enter into a Labor Peace Agreement with any Labor Organization that has requested in writing such a Labor Peace Agreement. The Operator shall enter into the Labor Peace Agreement within thirty (30) days from the request.
- (2) The Operator shall require its subcontractors (if any), successors, and assigns to include in the subcontracting or similar agreement a provision to comply with the requirements of this Rule.
- (3) The Operator shall agree in its proposal or application for an Operational Services Agreement that the Port has a proprietary interest in the timely placement of an Operator and in the Operator’s operations under a Labor Peace Agreement, and that undue delay in reaching a Labor Peace Agreement with a Labor Organization would interrupt the provision of services to the Port and subject the Operator and the Port to Labor Disruptions.
- (4) In the event that an Operator is unable to negotiate a Labor Peace Agreement with any Labor Organization within the thirty (30) day period set forth in Section III(A)(1) above, it may request to be excused from such

obligations with respect to that Labor Organization by delivering a written request to the Executive Director. Upon the receipt of the written request from the Operator, the Executive Director may appoint a hearing officer (who shall not be an employee working under the applicable Department Director) who shall hold an informal hearing after notice to the Operator and the subject Labor Organization. The Operator may be relieved of, and excused from, its obligations under Section III(A)(1) with respect to the subject Labor Organization if the hearing officer finds, after holding the noticed hearing, that:

- a. the Operator has attempted to reach a Labor Peace Agreement with the subject Labor Organization; and
- b. the Labor Organization has (i) refused to negotiate to reach a Labor Peace Agreement, or (ii) placed condition(s) on the Labor Peace Agreement that are arbitrary and capricious.

The findings of the hearing officer shall be final and may be based on any evidence or fact he or she deems relevant or credible whether or not the Operator or subject Labor Organization presented evidence or appeared at the hearing. The provision of a hearing is at the discretion of the Executive Director to facilitate the Port's proprietary interest in the timely compliance with this Rule. This Section III(A)(4) neither implies any legal duty of the Port nor confers any constitutional, legal, or contractual right of the Operator to enter into an Operational Services Agreement or of any party to contest the findings of the hearing officer in court or otherwise.

(B) Port Duties

- (1) The Port shall include in any Operational Services Agreement a provision requiring the Operator to abide by the requirements imposed under Section III(A) of this Rule as a condition of entering into any Operational Services Agreement.
- (2) All Requests for Proposals for an Operational Services Agreement shall include a reference to the requirements of this Rule. Failure to include such reference to this Rule in any such Request for Proposal shall not exempt any Operator otherwise subject to the requirements of this Rule.
- (3) The Port shall not enter into any Operational Services Agreement without finding that: (a) the Operator has entered into a Labor Peace Agreement with all Labor Organizations that, to the actual knowledge of the Executive Director, has requested in writing a Labor Peace Agreement with the Operator; (b) the Operator is excused from compliance pursuant to Section III(A)(4) above; or (c) that any exemption from this Rule as set forth in Section III(D), below, applies.
- (4) The Department Director shall grant exemptions from this Rule as set forth in Section III(D), below.

(C) Labor Organization Duties

- (1) Any Labor Organization seeking enforcement of this Rule must request a Labor Peace Agreement with an Operator under provisions of this Rule and must submit to the Department Director a copy of the written request it has sent to the Operator showing the date of the request and specifying the Request for Proposal with respect to which the request is made.
- (2) Any Labor Organization seeking enforcement of this Rule shall not engage in Labor Disruptions at the Port in violation of any applicable Labor Peace Agreement.

(D) Exemptions

The provisions of this Rule shall not apply to any of the following:

- (1) A bargaining unit of any Operator which has already recognized a Labor Organization for that bargaining unit;
- (2) A Labor Organization that has not submitted a written request to enter into a Labor Peace Agreement to an Operator covered under this Rule or that has not submitted evidence of such written request to the Department Director as set forth in Section III(C)(1) of this Rule;
- (3) Any Operator whose operations under the Operational Services Agreement are subject to the Railway Labor Act either by final decision by a court or agency of competent jurisdiction, or by mutual agreement between the Operator and a Labor Organization that is the exclusive bargaining representative of its employees, in which case the Labor Peace Agreement shall be voluntary;
- (4) Any agreement between the Port and a tenant, licensee, or permittee;
- (5) Any agreement between the Port and a public agency; or
- (6) Any Request for Proposal for which the Port has not received any responsive proposals or in which the Department Director determines that the risk to the Port's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative so as not to require a Labor Peace Agreement to achieve the Port's proprietary, investment, or other nonregulatory interest.

IV. ENFORCEMENT

- (A) The Department Director or his/her designee shall investigate complaints alleging that this Rule has been violated, and shall take any action necessary to enforce compliance, including referring such violation to the Port Attorney for civil or other action.
- (B) In addition to any other remedies available to the Port, the Port may terminate the Operational Services Agreement upon thirty (30) days' notice to the Operator to

cure its breach where the Operator has failed to: (1) enter into a Labor Peace Agreement as required by this Rule; or (2) include in a subcontracting or similar agreement the provision requiring compliance with this Rule as required by Section III(A)(2) of this Rule.

- (C) Where an Operator has failed to prevent a Labor Disruption that is directly or indirectly caused by the Operator's violation of this Rule or breach of its obligations under the Operational Services Agreement, or by its violation of laws or of rules and regulations of the Port, the Port may consider the Operator in breach of the Operational Services Agreement, provide such services through means or person other than the breaching Operator, and terminate the Operational Services Agreement after thirty (30) days of any notice to the Operator to cure its breach and such breach has not been cured.
- (D) Any challenge to the applicability of this Rule to a particular Operator or Labor Organization shall be brought to the Board only after first seeking an exemption from the Department Director as provided for in this Rule. Any such challenge must be commenced with the Board in writing within 15 days after notification that such exemption has been denied by the Department Director.

V. CONSTRUCTION

Nothing in this Rule shall be construed as requiring any Operator to change the terms and conditions of employment for its employees, recognize a Labor Organization as the bargaining representative for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a Labor Organization. Nothing in this Rule permits or requires the Port or any Operator to enter into any agreement in violation of the National Labor Relations Act of 1935. Provisions of this Rule shall be interpreted to achieve the Port's proprietary interest in preventing Labor Disruptions. This Rule shall not apply to any Operational Services Agreement in which the Port's proprietary interest in preventing Labor Disruptions is so minimal or speculative so as not to warrant concern for the Port's proprietary, investment, or other non-regulatory interest.

VI. EFFECTIVE DATE

The provisions of this Rule shall apply to any Operational Services Agreement for which a Request for Proposal was first issued on or after the effective date of the Ordinance adopting this Rule.

VII. SEVERABILITY

If any part or provision of this Rule, or the application thereof to any person, business entity, or circumstance, is held invalid by any court of competent jurisdiction, the remainder of this Rule including the application of such part or provisions to other persons, business entities, or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Rule are severable.