

INFORMATION REPORT

Report: Consideration of a Labor Peace Rule for Certain Operational Services Agreements Executed Pursuant to a Request for Proposal. **(SRD)**

MEETING DATE: 2/13/2020

AMOUNT: No Revenue Impact

PARTIES INVOLVED: Various Current and Future Providers of Certain Operational Services for the Port

SUBMITTED BY: Amy Tharpe, Director of Social Responsibility

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: None

EXECUTIVE SUMMARY

This report discusses the potential adoption of a Labor Peace Rule that requires that agreements with the Port entered into pursuant to a Request for Proposal for certain Operational Services contain a labor peace agreement with relevant labor organizations to avoid labor disruptions and ensure continuity of service to the Port. Operational Services Agreements are defined as those executed pursuant to a formal Request for Proposal and primarily provide one of the following four categories of 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.

BACKGROUND

Among the many agreements entered into by the Port, those relating to operational services entered into pursuant to a formal Request for Proposal (RFP) have the potential to impact continuity of service to the Port. These operational services such as automobile and truck tractor parking services, security guard services, and janitorial services. The Port has a strong financial and proprietary interest in reducing the risk of labor disruptions in such operational services and ensuring that the Port's business operations continue to smoothly and effectively serve the Port's business interests as well as allow it to serve the public.

In the past, the Port has subjected various operational service contracts to a Labor Peace Rule through different mechanisms. For example, Resolution 17-35, adopted on May 18, 2017, apply a Labor Peace Agreement Policy to Airport concession tenancy agreements while other some agreements (such as the one entered into pursuant to an RFP for parking management in Jack London Square) apply a similar Labor Peace Rule contractually through the parking

management agreement. There is no uniform labor peace policy for the Port's operational service agreements, however.

Accordingly, this report discusses a proposed Labor Peace Rule that would apply consistently for such operational service agreements entered into pursuant to a formal RFP. It is important to note that this proposed Labor Peace Rule focuses on RFPs for operational services, which are the types of services in which the Port has a strong proprietary interest in preventing labor disruptions. Labor peace for construction services are addressed through the Maritime and Aviation Project Labor Agreement (MAPLA), which is not the subject of this Report.

ANALYSIS

Attached to this Report is the form of the proposed labor peace rule. This proposed rule is based off the Labor Peace Rule approved by the Board through Resolution No. 17-35, which only applies to Airport concessionaires, and is designed to address the potential labor disruptions that arise in four specific operational services for which agreements are adopted pursuant to a formal RFP as defined in the Port's Purchasing Ordinance (Ordinance No. 4321). If adopted as a new ordinance, the proposed Labor Peace Rule would apply to agreements for which the RFP was first issued on or after the effective date of the ordinance.

The proposed Labor Peace Rule provides for a level of consistency in four specific operational service areas, further strengthens the Port's RFP process, and protects the proprietary interest of the Port.

The proposed Labor Peace Rule would apply to an agreement between the Port and an operator selected pursuant to an RFP 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.

In general, a Labor Peace Rule requires operational service providers to guarantee labor peace with any relevant labor organizations, such as a union. The rule does not, however, specify how such providers and labor organizations should transact, but requires that labor peace be guaranteed. Some of the main features of the proposed Rule include:

- Provides consistency in procurement for RFP operational services and identifies the proprietary interest of the Port and requires potential service providers to enter into a labor peace agreement before the contractual services become effective.
- Requires Operators (defined as those operating or seeking to operate under an Operational Services Agreement) must enter into a Labor Peace Agreement within 30-days of a written request from any labor organization.
- Requires Operators to enter into a Labor Peace Agreement as part of its proposal or application for an Operational Services Agreement and prior to the Board approval of an agreement. If the Operator and Labor Organization are unable to timely enter into a Labor Peace Agreement, the Operator may submit a written request to the Executive Director, who may appoint a hearing officer to review the following criteria:

- The Operator has attempted to reach a Labor Peace Agreement with the subject Labor Organization; and
- 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.

Findings from the hearing officer are final and may be based on any materials the hearing officer finds relevant and the Executive Director possesses the discretion to facilitate the Port's proprietary interest in the timely compliance with this Rule.

Some exemptions to the Labor Peace Rule include:

- Existing bargaining units of an Operator with a recognized Labor Organization.
- Operational Services Agreements subject to the Railway Labor Act.
- Agreements between the Port and a tenant, licensee, or permittee; or with a public agency.
- Any RFP for which the Port has not received any responsive proposal or in which the Department Director determines the risk of labor/management conflict to the Port's financial or other nonregulatory interest is so minimal or speculative that the Labor Peace Agreement is not necessary to achieve the Port's proprietary, investment, or other nonregulatory interest.

Department Directors will investigate complaints alleging violations of the Rule and will take appropriate actions to enforce compliance, including referring matters to the Port Attorney for civil or other action. The Port may also terminate an Operational Services Agreement with a 30-day notice to cure if the Operator fails to enter into the required Labor Peace Agreement. Challenges to the applicability of the Rule may be brought to the Board only after first seeking an exemption from the Department Director.

Staff believes this proposed Labor Peace Rule would provide a consistent method to ensure the continuity of operational services with minimal disruptions while applying the rule to the services for which the rule would be most effective, i.e., operational services agreements entered into pursuant to a formal RFP

If desired by the Board, staff will bring for the Board's consideration an ordinance adopting a Labor Peace Rule for Certain Operational Services in the form attached to this Report.