



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 10/15/2024

To: Board of Supervisors

Department or Agency Name(s): County Administrator's Office

Staff Name and Phone Number: Christel Querijero and Jennifer Larocque, (707)565-2431

Vote Requirement: Majority

Supervisorial District(s): Countywide

Title:

Labor Peace Policy Discussion

Recommended Action:

Receive staff recommendation and provide direction on next steps.

Executive Summary:

On September 12, 2023, the Sonoma County Board of Supervisors repealed the labor neutrality provision in the Living Wage Ordinance and asked staff to explore implementing a Labor Peace policy. The intention of Labor Peace policies is to prevent a work stoppage that would interrupt a County service contract or reduce revenue to the County. Labor Peace policies generally require certain employers to grant unions organizing rights, and in return, unions agree not to disrupt operations with work stoppages. Federal law limits local governments' involvement in union organizing, and courts use a two-prong test to determine if the government is acting as a proprietor instead of a regulator.

Staff are returning at the Board's request with information on Labor Peace policies and requesting Board direction on next steps. While staff do not recommend implementing a Labor Peace policy at this time, recognizing the Board's interest in strengthening labor protections, staff recommend updating the County's procurement process and standard contract language to strengthen the County's commitment to fair labor practice.

Discussion:

Background

On September 12, 2023, the Board of Supervisors (Board) repealed the labor neutrality provision contained in the Living Wage Ordinance, and requested that staff return to the Board with options to implement a Labor Peace policy (link: [≤?](https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=6339082&GUID=73594069-DC25-4D44-910C-727C1624E5C1&Options=&Search=>)).

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The Labor Neutrality provision in the Living Wage Ordinance required contractors covered under the ordinance to neither hinder nor further collective bargaining activities. A Labor Peace policy or ordinance typically compels select employers (including County contractors, service providers, and lessees) to give unions special rights that make it easier for a union to organize employees. In exchange, unions agree not to disrupt an employer's operations with work stoppages. Labor Peace policies can be so robust as to require contractors to enter into an agreement with any employee organization or require contractors to re-open

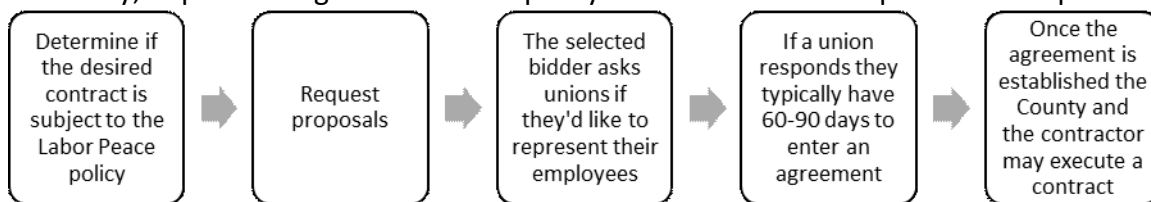
bargaining agreements and negotiate a clause to prevent work stoppages.

Local government's ability to influence private sector union organizing is limited by Federal law; Labor Peace is a heavily litigated area of public policy. The courts typically apply a two-prong test to determine if a policy is valid first based on the government's role as either a regulator, the authority that creates laws and regulations, or proprietor, the entity that provides services, such as building roads, maintaining facilities, and direct services to residents.

Local governments may require Labor Peace agreements when the government is a proprietor protecting its ability to deliver services. Second, courts consider whether the scope of the policy is "specifically tailored" to the proprietary interest.

For example, Bay Area Rapid Transit (BART) asserts a financial interest in maintaining uninterrupted operations at hotel and hospitality businesses on its real estate assets. BART's Labor Peace policy requires an evaluation of each such operation to determine if BART has a direct stake in the project.

Generally, implementing a Labor Peace policy results in a modified procurement process:



The County has not had a work stoppage by a contractor, lessee or their sub-contractors impact the County's ability to maintain services or receive revenue.

Existing Labor Protections

The National Labor Relations Act protects a union's right to organize labor. These protections include guaranteeing collective bargaining and the ability for workers to form unions without retaliation, and prohibiting employer interference. Employers cannot interfere with union organizing activities or coerce employees to avoid joining a union. California state law provides additional protections with stricter safeguards against employer retaliation for union activities. Employees can leverage a number of enforcement mechanisms when an employer infringes on their right to organize or to address retaliation. Most common is the ability to file claims with the California Public Employment Relations Board and the National Labor Relations Board.

Locally, the County has adopted a Living Wage ordinance and Project Labor Agreement, which ensure certain rights for contractor's employees.

Labor Peace Approaches

Jurisdictions interpret the two-prong test of Labor Peace policies in different ways, and implement Labor Peace policies by service area, select contracts within service areas, or narrow applications.

Service area application, typically used outside California, applies the policy to entire sectors (e.g., human services in New York City, health services in New Jersey, or security services in San Diego).

Some jurisdictions analyze each contract within a service area, such as Baltimore and Bay Area Rapid Transit, and evaluate each contract or lease individually to determine if it falls under Labor Peace policies.

Narrow application is often seen in revenue-generating operations like airports and ports (e.g., services at Port of Oakland or Los Angeles International Airport).

Labor Peace Policies in California Jurisdictions

Labor Peace policies are uncommon in local California government. When applied, they are tied to a discrete operation (airports, piers, construction) or hospitality operations on government property. Few outliers exist, such as Los Angeles City’s Labor Peace ordinance for refuse collection and San Diego County’s ordinance for janitorial, landscaping and security. The table below shows a representative sample of Labor Peace policies in California.

Hospitality operations on government property	Bay Area Rapid Transit, San Francisco, Los Angeles City and County
Airports	San Francisco International Airport, Los Angeles International Airport, Oakland International Airport
Piers and Ports	Port of Oakland, Santa Monica Pier, San Francisco Port
Refuse Collection	Los Angeles City
Security, Janitorial, Landscaping	San Diego County
Construction	Los Angeles International Modernization Project, California High-Speed Rail, Sacramento Kings Golden 1 Center

Sonoma County Charles M. Schulz Airport saw 318,186 enplanements (a passenger boarding a plane) in 2023. According to one poll, neither similarly sized airports (117,972 to 638,799 enplanements), nor slightly larger airports (Fresno with 1.2 million enplanements and Sacramento with 6 million enplanements), have Labor Peace policies.

Larger jurisdictions, such as San Francisco and San Diego County, have Offices of Labor Standards Enforcement who oversee the implementation of Labor Peace policies.

Potential Policy Implementation Impacts

Labor peace policies can have unintended implications for jurisdictions, including potential delays, legal risks, administrative burdens, increased costs, and a reduced pool of contractors.

- *Procurement timeline:* Many Labor Peace policies require contractors to sign a Labor Peace Agreements with unions before finalizing contracts, potentially delaying procurement.
- *Legal risk:* The County could open itself to legal challenge by implementing a labor peace policy if the County is not acting as a proprietor protecting specific interests.
- *Increased administration:* A centralized staffing model to administer and ensure compliance with the

Labor Peace policy would be needed for multi-departmental support.

- *Increased costs:* UC Berkeley Labor Center estimates that workers covered by a union contract in California earn 12.9% more on average than non-union workers. Contractors may submit higher bids to the County in anticipation of unionization and increased labor cost.
- *Potential for fewer bidders:* Some employers may determine not to pursue a contract with the County if the County requires Labor Peace agreements. While some organizations exempt contractors with a minimum number of employees (for example, less than ten full time employees), other smaller contractors who do not meet the exemption may not pursue contracts that are subject to a Labor Peace policy.

Protections for Critical Services

The County uses contractual requirements to protect against work stoppages for critical services. The County can require that contractors who provide critical services maintain services in the event of a work disruption. For instance, the Sonoma County Main Adult Detention Facility utilizes contracts to provide critical services to inmates. The Sheriff's Office includes clauses in essential contracts (including inmate meals, medical/dental care, and behavioral health services) that require contractors to continue providing services in the event of a strike or other unusual occurrence.

Staff Recommendation and Next Steps

Staff do not recommend implementing a Labor Peace policy for County operations due to the potential unintended implications including procurement delays, legal risks, administrative burdens, increased costs, and a reduced pool of contractors. Recognizing the Board's interest in strengthening the County's commitment to fair labor practice, staff recommend two modifications to the County's standard procurement process and contract language for Board consideration:

- 1. Require reporting of violations.** The County requires bidders to notify the County of violations in the last five years that were sustained with the National Labor Relations Board, Occupational Safety and Health Agency, California Labor Commission, Equal Employment Opportunity Commission, Environmental Protection Agency, and/or the Department of Fair Employment and Housing. Staff may include the California Public Employment Relations Board (PERB) and provide guidance to staff to determine the risk of engaging with a contractor who has a past violation.

The County's standard contract language requires "that [contractor's] operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws." Staff may amend this language to require contractors to notify the County of violations including those by labor relations boards. Staff would require training to evaluate the violation and manage the contract appropriately, including considering contract termination.

- 2. Evaluate employee benefits in the procurement process.** As modeled in San Diego County for janitorial, security and landscaping contracts, the County may ask bidders in the Request for Proposal (RFP) process if employees performing work under the contract have a bargaining agreement. In the

absence of an agreement, the County may request information on benefits such as wages, health care, retirement and uniforms. Staff would require training to evaluate and score this information as part of the RFP process.

If the Board rejects the staff recommendation and directs staff to pursue a Labor Peace policy staff will seek Board direction on the scope of the policy, identify critical contracts where service delivery or revenue collection would be impacted by a work stoppage and develop a policy that is specifically tailored to protect the identified proprietary interests. If directed to pursue Labor Peace, staff would procure specialized legal counsel, and would return to the Board to request \$30,000-\$50,000 to fund the contract.

Strategic Plan:

NA

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

While not designated for a racial equity analysis, an analysis is included as Attachment A to this item. Racial equity data can be considered in two ways for this Labor Peace policies. First, for residents receiving services, a Labor Peace policy ensures service continuity, but comprehensive racial demographic data on those receiving services is lacking. Second, regarding contractor employees, while no data exists on the impact of Labor Peace policies on racial demographics or unionization rates, it is assumed that these policies increase unionization. Unionization provides significant wage boosts for Black (14.6%) and Latino (17.6%) workers, reducing wage gaps with white workers.

Prior Board Actions:

September 12, 2023: Amendments to Living Wage Ordinance - First Read

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

Should the Board elect to pursue a Labor Peace policy, staff anticipate costs for legal counsel and increased costs for service contracts. If the Board directs staff to develop a policy spanning multiple departments staff will return with a funding request for staffing to support the policy implementation.

Narrative Explanation of Staffing Impacts (If Required):

None.

Attachments:

Attachment A: Racial Equity Analysis

Attachment B: Presentation

Related Items "On File" with the Clerk of the Board:

NA