

5/18/17
Item No.: 5.3
DW/lhr DW

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 17-35

**RESOLUTION ADOPTING A REVISED LABOR PEACE
AGREEMENT POLICY FOR AIRPORT CONCESSION TENANCY
AGREEMENTS.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item 5.3 dated May 18, 2017 and related agenda material (the "Agenda Report"), has received the expert testimony of Port of Oakland staff, and has provided opportunities for and taken public comment; and

WHEREAS, the City of Oakland, a municipal corporation, acting by and through the Board ("Port") has a financial and proprietary interest in business operations that have concessions in the Terminal Complex at Oakland International Airport ("Airport") because these operations base their concession payments to the Port in part on the revenue they generate and because the passenger experience at Airport concessions contributes to the decisions made by potential Airport passengers as to which San Francisco Bay Area airports to patronize; and

WHEREAS, it is essential that these operations conduct business efficiently and without interruption or boycotts; and

WHEREAS, in 2012-13, Oakland Airport experienced several labor-related disruptions caused by disputes between organized labor and Airport Concessionaires who did not come to a labor peace agreement prior to commencing tenancy;

WHEREAS, at the regular meeting held on February 27, 2014 the Board did adopt Resolution No. 14-18, requiring that all Concessionaires enter into signed "Labor Peace Agreements" with the labor organizations that represent or are seeking to represent employees in the concession industry that prohibit the labor organizations and their members from engaging in picketing, work stoppages, boycotts or other economic interference with or disruption of the business of the concession operators for the duration of their concession tenancy agreements with the Port; and

FURTHER RESOLVED, that in adopting this Resolution and the Labor Peace Rule the Board has exercised its independent judgment based on substantial evidence in the record, and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received.

At the special meeting held on May 18, 2017

Passed by the following vote:

Ayes: Commissioners Cluver, Hamlin, Martinez, Story, Yee and
President Colbruno – 6

Excused: Commissioner Butner – 1

Noes: 0

- (I) **"Labor Peace Agreement"** means a written agreement between a Concessionaire 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 (1) during any organizing, membership drive or negotiation of a collective bargaining agreement; and (2) in the case where the Labor Organization has entered into a collective bargaining agreement with the Concessionaire, during the entire term of the Concessionaire Agreement.
- (J) **"Port"** means the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners.
- (K) **"Request for Proposal"** means any request for proposals, request for qualifications, invitations to bid, or similar request or invitation issued by the Port for a Concession.
- (L) **"Rule"** means this Labor Peace Rule.
- (M) **"Subcontractor"** means any person or business entity, not an employee that enters into a subcontract, sublicense, or sublease or similar agreement with a Concessionaire to perform duties within the Airport's Terminal Complex related in any way to a Concessionaire Agreement.
- (N) **"Terminal Complex"** means areas in, adjacent to, and immediately surrounding all buildings and structures (including but not limited to Buildings M101, M102, M103, M104, M114, M130, M152, M157, M158, M363, M367, M368, and XU70) located at the Airport and open to the public for purpose of flight ticket purchase, passenger enplanement and deplanement, including Sterile Areas and adjoining Ramps, public lobby waiting, baggage check-in and pick up, and those other services related to public passenger air travel.

III. REQUIREMENT TO KEEP LABOR PEACE AND PREVENT LABOR INTERRUPTIONS

(A) Concessionaire Duties

- (1) Prior to entering into a Concessionaire Agreement, a Concessionaire shall enter into a Labor Peace Agreement with any Labor Organization that has requested such a Labor Peace Agreement. The Concessionaire shall enter into the Labor Peace Agreement within thirty (30) days from the request.
- (2) The Concessionaire shall require its tenant, lessee, subtenants, sublessees, successors, and assigns to include in the sublease or similar agreement a provision to comply with the requirements of this Rule.
- (3) The Concessionaire shall agree in its bid or application for a Concession and the Concession Agreement that the Port has a proprietary interest in the timely placement of a Concessionaire and operations of the Concession under a Labor Peace Agreement. Undue delay in reaching a Labor Peace Agreement with a Labor Organization would interrupt the provision of

a Labor Peace Agreement with the Concessionaire, (b) the Concessionaire 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 Airport 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 a Concessionaire under provisions of this Rule and must submit to the Airport Director a copy of the written request it has sent to the Concessionaire 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 Concessionaire 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 a Concessionaire covered under this Rule or that has not submitted evidence of such written request to the Airport Director as set forth in Section III(C)(1) of this Rule;
- (3) Any Concessionaire whose operations at the Airport 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 Concessionaire and a Labor Organization which is the exclusive bargaining representative of its employees. In such cases, the Labor Peace Agreement shall be voluntary;
- (4) A Concessionaire Agreement under which the Concessionaire does not operate on a regular basis with a defined complement of employees within the Terminal Complex;
- (5) Any agreement between the Airport and a public agency; or
- (6) Any Concessionaire Agreement where the Airport Director determines that the risk to the Airport'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 Airport's proprietary, investment, or other nonregulatory interest.

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.