

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

POLICIES

ARTICLE 6 - REAL PROPERTY MANAGEMENT

PART 6.0 - LEASES

SECTION 6.02 - LABOR PEACE POLICY FOR FOOD & BEVERAGE AND RETAIL CONCESSIONS

PURPOSE: To establish a policy to address the known risk that strikes, picketing and disruption will cause to the Authority's ability to operate its revenue-generating property, comply with its federal obligations to be financially self-sustaining and allow the Authority to participate competitively in the marketplace.

1. POLICY STATEMENT:

- (a) The San Diego County Regional Airport Authority ("Authority"), acting through its Board, owns and operates San Diego International Airport ("Airport"), located along the City of San Diego's waterfront, a major tourist hub and destination. The Authority leases its real property to companies engaged in travel and tourism, and in so doing faces the same risks and liabilities as private businesses participating in management of similar facilities. As a result, the Authority has an ongoing Proprietary Interest in the management and use of that Airport real property and Airport facilities and must make prudent business decisions, as would any private business, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk.
- (b) The Authority has broad powers to manage the Airport and is obligated to ensure that the Airport is financially self-sustaining. The Authority has the power to fix rates and collect charges for the use of Airport property and facilities and to lease, maintain and operate the Airport. All revenues derived from the Airport may only be used for the capital and operating costs of the airport system. The Authority participates in the market for commercial airport facilities as the owner, operator and lessor of its revenue-generating property. The Authority has a proprietary interest in owning and managing its revenue-generating commercial airport. To help make the Airport financially self-sustaining, the Authority leases space in its passenger terminals to food & beverage and retail concessionaires and charges concessionaires rent for their lease and use of the Airport to cover the costs of these airport facilities. In adopting this Policy, the Authority is acting as an airport proprietor and market participant in managing its internal operations. By adopting this Policy, the Authority is addressing the known financial risk to the Authority caused by strikes, picketing and disruption of services and preserving the smooth and

efficient airport operations that will attract passengers and air service and improve the flow of traffic and passengers through the Airport.

- (c) This Policy is narrowly tailored and intended to maximize the returns and minimize the risk to the Authority's Proprietary Interest resulting from possible conflict between Employers leasing, and operating food & beverage and retail concessions on Airport property and Labor Organizations, arising out of union organizing campaigns, labor negotiations, and disruption that may be caused by such conflict. Experience of public entities and private employers demonstrates that union organizing drives and union efforts to secure representation rights and an initial collective bargaining agreement can deteriorate into protracted and acrimonious conflict. Such conflict threatens the Authority's Proprietary Interest when private employers enter into food & beverage and retail concession leases to use Airport property, and labor conflict could jeopardize base rent payments or rent payments calculated on a percentage of sales. That threat is most acute during the period when a Labor Organization (1) seeks to gain recognition as the collective bargaining representative for Employees and (2) if recognized, seeks a First Contract with the Employer.
- (d) The sole purpose of this Policy is to address the known risk to the Authority's financial interests caused by labor disruption in the terminals and protect the Authority's Proprietary Interest in the food & beverage and retail concessions at the Airport. This Policy is not enacted to: favor any particular procedure for determining employee preference, or lack of preference, regarding Labor Organization representation, or the outcome of any such procedure; skew such procedures to favor or hinder any party; interfere with the negotiation, terms, or scope of a First Contract, if applicable; or express or implement any generally applicable policy regarding private sector labor/management relations, or regulate those relations in any way.

2. DEFINITIONS.

- (a) The following terms used in this Policy shall have the meanings set forth below:

"Authority " means the San Diego County Regional Airport Authority, acting through its President/CEO.

"Concession" means a business located in the terminals at San Diego International Airport engaged in the sale of food and beverage or retail goods to the public under a Concession Lease with the Authority.

"Demand for Recognition Period" means the period during which the Labor Organization seeks recognition as the collective bargaining representative of the Employees.

"Economic Action" means concerted action initiated or conducted by a Labor Organization, or Employees acting in concert with a Labor Organization, at the Employees ' worksite, to bring economic pressure to bear on an Employer, as part of a campaign to organize Employees or prospective Employees of that Employer, or in attempting to secure a First Contract, if applicable.

"Economic Action " includes such activities as striking, picketing, or boycotting.

"Economic Action" does not include a lawsuit to enforce this Policy.

"Employee" means any individual performing work for an Employer for compensation under a Concession Lease on leased Airport property relating to Concession Operations on a full-time, part-time, seasonal, or temporary basis, including those made available to work for the Employer through a temporary service, staffing agency, or similar agency.

"Employer" means any person or entity, including a subcontractor, with Employees engaged in Concession Operations.

"Concession Lease" means a lease, sublease, license, sublicense, or other means of granting the right to a Concession to use Airport property, in which the Authority receives a percentage rent based on the amount of sales. A "Concession Lease" must be for a term of at least twelve months.

"Concession Operations " means any work done by Employees under a Concession Lease.

"First Contract " means the first enforceable contract entered into between an Employer and a Labor Organization setting one or more terms or conditions of employment.

"First Contract Period" means, if a Labor Organization is recognized as the collective bargaining representative of Employees, the period between such recognition and execution of a First Contract.

"Labor Organization" means any organization of any kind or any agency or employee representation committee, in which Employees participate and which exists for the purpose, in whole or part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.

"Labor Peace Agreement" means an enforceable written agreement between an Employer and a Labor Organization, as described more fully in Section 6.02(a)(2).

"Parties" means an Employer and Labor Organization that has requested to be, or has been, recognized as the collective bargaining representative of Employees.

"Pre-existing Lease" means any Concession Lease entered into before the effective date of this Policy.

"Proprietary Interest" means any nonregulatory arrangement or circumstance in which the Authority has a financial or other nonregulatory interest.

"Small Business" means a profit-making corporation, sole proprietorship, or partnership that:

a. Is enrolled in the Authority's Bonding and Contract Financing Assistance Program, or

b. A business concern that is certified as a DBE by the California Unified Certification Program, or

c. Possesses valid certification issued by an agency, approved by the Authority, that verifies the firm is within the SBA size standards, or d. Is an airport concessionaire that provides evidence that its business size is within standards established under 49 CFR Part 23, Section 23.33.

"Subcontract " means any agreement between the authorized tenant, licensee, or other user under a Concession Lease and another person or entity that permits that other person or entity to operate or manage all or a portion of Concession Operations.

"Subcontractor" means the person or entity that operates or manages all or a portion of Concession Operations under a Subcontract.

3. PROCEDURES TO MINIMIZE DISRUPTION CAUSED BY LABOR/ MANAGEMENT CONFLICT.

(a) An Employer who receives a written request by a Labor Organization to enter into a Labor Peace Agreement shall:

(1) Inform the Authority, within five (5) business days of receiving the request, that a Labor Organization seeking to represent its Employees has requested the Employer to enter into a Labor Peace Agreement required by this Policy;

(2) Enter into a Labor Peace Agreement, with the Labor Organization as to the Employees it seeks to represent, containing the following provisions:

(A) The Labor Organization agrees not to engage in Economic Action against the Employer during the Demand for Recognition Period, and should the Labor Organization be recognized, the First Contract Period;

(B) If the Parties are unable, should the Labor Organization be recognized, to voluntarily negotiate the terms of a First Contract within ninety (90) days of such recognition, the Parties will submit the matter to a mutually-agreed mediator to assist the parties in agreeing on a First Contract and, if the Parties are unable to agree on a First Contract through mediation within thirty (30) days of beginning mediation, the Parties will submit the dispute to a mutually-agreed arbitrator, authorized to impose reasonable terms of a First Contract resolving the proposals and positions of the Parties; and

(C) The Parties agree to submit to binding arbitration all disputes relating to interpretation, application, and implementation of the Labor Peace Agreement.

(3) Upon the Authority's request, promptly provide to the Authority a report attesting to the status of the Employer's compliance with the requirements of this Section 3(a)

including a statement by any Labor Organization that has requested that the Employer enter into a Labor Peace Agreement certifying the accuracy of the Employer's report; and

(4) Include as a material term in any Subcontract a provision requiring the Subcontractor(s) to comply with this Policy. This provision shall be a material and mandatory term of such Subcontract and shall state: "San Diego County Regional Airport Authority Policy 6.02 applies to [Subcontractor] and is incorporated herein by reference. To the extent [Subcontractor] employs Employees in Concession Operations within the scope of Policy 6.02, [Subcontractor] hereby agrees, as a material condition of this subcontract, to enter into and abide by a Labor Peace Agreement with a Labor Organization or Organizations that represents, or seeks to represent, [Subcontractor's Employees], if and as required by Policy 6.02, and to otherwise fully comply with the requirements of that Policy."

(b) If the Parties are unable to agree on the terms of a Labor Peace Agreement within sixty (60) days of a request for a Labor Peace Agreement, or, if the Employer requests an exemption within sixty (60) days of the Authority's rejection of the request for an exemption, the Parties shall submit the matter to a mutually-agreed mediator to assist the Parties in reaching a Labor Peace Agreement and, if the Parties are unable to reach a Labor Peace Agreement through mediation within thirty (30) days of beginning mediation, the Parties shall submit the dispute to a mutually agreed arbitrator, who is authorized to impose a reasonable Labor Peace Agreement, permissible under federal law, under terms that effectuate the purposes of this Policy.

(c) Any Employer that has in good faith fully complied with the requirements in subsection 3 will be excused from further compliance as to a Labor Organization that has violated a Labor Peace Agreement.

(d) The Authority shall include in every Concession Lease a provision requiring any Employers operating under the Concession Lease, to comply with the requirements of this Policy and all other applicable laws.

4. EXEMPTIONS.

(a) This Policy shall not apply to any Employer with respect to any employee who does not work in Concession Operations.

(b) This Policy shall not apply to an Employer if:

1. The Employer is a Small Business.
2. The Authority has no Proprietary Interest in the Concession Lease under which the Employer operates;
3. The Employer operates under a Pre-existing Lease. This exemption applies to an Employer for the duration and any extension of such Pre-existing Lease;
4. The Employer is a signatory to valid and binding collective bargaining agreement(s) covering all of its Employees;
5. The Employer is a governmental entity, and the law would prohibit application of this Policy;

6. The Employer is a party to a grant or agreement with a governmental entity and applying the requirements of this Policy would violate the terms or conditions of such agreement or any related rules or regulations;
7. The term of the Concession Lease is 12 months or less.

(c) The Authority, in its sole discretion, shall determine the applicability of an exemption under subsection 4(a) or 4(b) on a case-by-case basis. Any Employer claiming an exemption must submit a written request, including the evidentiary basis for the exemption, to the Authority within five (5) business days of receiving a request to enter into a Labor Peace Agreement. The Employer shall have the burden of proving that an exemption is applicable.

5. IMPLEMENTATION AND ENFORCEMENT.

- (a) The Authority shall be authorized to coordinate implementation and enforcement of this Policy and may promulgate appropriate guidelines or rules for such purposes.
- (b) Nothing in this Policy shall be construed as requiring Concessionaire, through arbitration or otherwise, to change 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.

6. PROSPECTIVE EFFECT.

This Policy is intended to have prospective effect only. This Policy shall be interpreted to avoid violating any laws that prevent the Authority from impairing obligations under any Pre-existing Lease.

7. PREEMPTION.

Nothing in this Policy shall be interpreted or applied so as to create any right, power, or duty in conflict with any Federal or State law or Grant Assurance.

8. SEVERABILITY.

If any Section, subsection, sentence, clause, phrase, or word of this Policy or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Policy.

[Adopted by Resolution No. 2022-0084 dated September 1, 2022.]