



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

FIRST AMENDED CHARGE
LA-CE-1193-M

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES If so, Case No. NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: Service Employees International Union, Local 221

b. Mailing address: 4004 Kearny Mesa Road, San Diego, CA 92111

c. Telephone number: (858) 560-0151

d. Name and title of person filing charge: Kerianne R. Steele, Attorney E-mail Address: ksteele@unioncounsel.net
Telephone number: (510) 337-1001 Fax No.: (510) 337-1023

e. Bargaining unit(s) involved: Appraisal, EDP, Fiscal & Purchasing; Clerical; Food Services and Housekeeping; Middle Management; Professional; Public Services; Social Services Supervisor; Health Services; Registered Nurses; Social Welfare Bargaining Units

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: County of San Diego

b. Mailing address: 1600 Pacific Highway, San Diego, Ca 92101

c. Telephone number: (858) 694-3900

d. Name and title of agent to contact: Helen N. Robbins-Meyer, Chief Administrative Officer E-mail Address: cao_mail@sdcounty.ca.gov
Telephone number: (619) 531-5880 Fax No.: (619) 557-4060

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.
PERB-61 (7/22/2014)

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)
- In-Home Supportive Services Employer-Employee Relations Act (Gov. Code, § 110000 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Gov't Code secs. 3502, 3503, 3505 and PERB Regulations 32603(a), (b), (c) and (g)

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (*a copy of the applicable local rule(s) MUST be attached to the charge*):
See attached to the original charge as Exhibit A

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)
See attached

DECLARATION

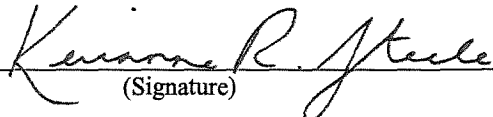
I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on July 12, 2017

See attached
Verification of
David Garcias

at Alameda, California
(City and State)

(Date)

Kerianne R. Steele
(Type or Print Name)


(Signature)

Title, if any: Attorney

Mailing address: 1001 Marina Village Parkway, Suite 200, Alameda, California 94501

Telephone Number: (510) 337-1001 E-Mail Address: ksteele@unioncounsel.net

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,
State of California. I am over the age of 18 years. The name and address of my
residence or business is Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

On July 12, 2017, I served the Public Employment Relations Board
(Date) (describe document(s))

First Amended Unfair Practice Charge

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery
by the United States Postal Service or private delivery service following ordinary business
practices with postage or other costs prepaid;

personal delivery;

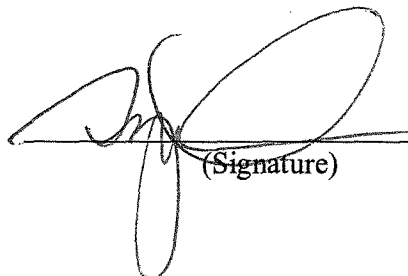
facsimile transmission in accordance with the requirements of PERB Regulations

32090 and 32135(d).

Ms. Helen N. Robbins-Meyer
Chief Administrative Officer
County of San Diego
1600 Pacific Highway, Room 209
San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on July 12, 2017, at Alameda, California.

Stephanie Mizuhara
(Type or print name)


(Signature)

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Appendix to First Amended PERB Charge

(Underlined font indicates an amendment)

1. The Charging Party, Service Employees International Union, Local 221 (“SEIU Local 221” or “Union”) is and has been at all times material hereto a recognized employee organization within the meaning of Government Code section 3501(b) et seq. (the “MMBA”), and is and has been recognized by County of San Diego (“County”) as an employee organization that represents employees in ten (10) appropriate bargaining units (referred to as the Appraisal, EDP, Fiscal and Purchasing (“AE”), Clerical (“CL”), Food Services and Housekeeping (“FS”), Middle Management (“MM”), Professional (“PR”), Public Services (“PS”) & Social Service Supervisors (“SS”), collectively (“Joint”), Registered Nurses (“RN”), Health Services (“HS”), and Social Welfare (“SW”) bargaining units).

2. The County is a public agency within the meaning of Government Code section 3501(c). At all times material hereto, the County has been the employer of SEIU Local 221 members in the ten (10) bargaining units.

3. The County and SEIU Local 221 are parties to four (4) Memoranda of Agreements (“MOAs”), which set forth the wages, hours, and terms and conditions of employment of the employees in the ten (10) bargaining units. All four (4) MOAs expired on June 22, 2017.

4. The parties are currently engaged in bargaining for successor MOAs, jointly at one bargaining table.

5. The County has adopted a Labor Relation Ordinance (Ordinance No. 6273) (“Ordinance”) for the purpose of establishing uniform and orderly methods of communication between the County and its employees concerning their respective rights and duties as provided in the MMBA and the San Diego County Charter. Article IV, section 1(d) of the Ordinance states: “a recognized employee organization shall, upon request, be provided with payroll information by the Auditor and Controller, consisting of employees’ names, classifications and work locations for employees in the represented unit.” A true and correct copy of the Labor Relations Ordinance is attached hereto, marked as **Exhibit A**, and is incorporated by reference as though fully set forth at length herein.

6. The County has adopted a summer dress code called “Cool Summer Days in the County” from June 20, 2017 to September 21, 2017. In a June 13, 2017 memorandum addressed to all County employees, County Chief Administrative Officer Helen N. Robbins-Meyer (“CAO”) described the summer dress code as “appropriate business casual attire.” The CAO noted, “If you are scheduled for meetings or other activities that require business attire, I will continue to expect you to dress accordingly. As always, each Appointing Authority is responsible for establishing dress rules within their individual departments.” A true and correct copy of the June 13, 2017 memorandum is attached hereto, marked as **Exhibit B**, and is incorporated by reference as though fully set forth at length herein.

7. A June 20, 2017 email sent on behalf of Kimberly Gallo, Director of the East & North Central Regions of the County’s Health & Humans Services Agency, defined “appropriate business casual attire” as “[c]asual clothing, such as jeans (including colored jeans) and sneakers

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Appendix to First Amended PERB Charge

of any kind.” Clothing prohibited from the office included: “flip flops or other unsafe shoes, shorts, tank tops, tights, beach or athletic wear and torn or revealing clothing.” A true and correct copy of the June 20, 2017 email is attached hereto, marked as **Exhibit C**, and is incorporated by reference as though fully set forth at length herein.

8. Prior to June 20, 2017, the County never adopted any dress code applicable to all County employees.

9. In the past, one County office tried to introduce a dress code unilaterally without success. In December 2016, the Lemon Grove Family Resource Center (“Center”) informed two employees that they must stop wearing flip flops. However, at a February 2017 staff meeting, after the Center mentioned this dress code issue, Union steward Drucilla Willis responded that the County had no dress code policy. Subsequently, the Center did not impose this dress code and permitted employees to continue wearing flip flops. The County did not mention introducing a dress code again until it sent the June 13, 2017 memorandum and June 20, 2017 email to employees.

10. On or about July 3, 2017, SEIU Local 221 filed the original unfair practice charge in this proceeding against the County alleging that the County unilaterally changed the established past practice regarding dress code by implementing a restrictive dress code policy. SEIU Local 221 served the charge on the County that same day.

11. A week after receiving SEIU Local 221’s charge, on July 11, 2017, Helen N. Robbins-Meyer (“Robbins-Meyer”), Chief Administrative Officer, issued a memorandum to all SEIU Local 221-represented employees, which she entitled “RESCISSION OF COOL SUMMER DAYS.” In the memorandum, the County rescinded its unilaterally implemented restrictive dress code policy. It suggested that the dress code policy it had implemented was beneficial to employees, describing it as “popular[.]” Robbins-Meyer alleged that the Cool Summer Days tradition had existed for over fifteen years, and that she was merely introducing it again when she issued her June 13, 2017 memorandum. She suggested that, absent the benevolent act of issuing her June 13, 2017 memorandum, employees would be required to dress according to the usual and customary practice for their applicable division or department. She expressly blamed SEIU Local 221 for her act of rescinding her “Cool Summer Days 2017” memorandum. She claimed that [despite the County having never provided SEIU Local 221 prior notice or opportunity to bargain over a proposed dress code policy], SEIU Local 221 had never asked to meet and confer regarding “the established practice.” She stated that, by rescinding the “Cool Summer Days 2017” memorandum, SEIU Local 221-represented employees only would “continue to follow their usual and customary practices for their division or department immediately” (implying that non-SEIU Local 221-represented employees would enjoy a greater freedom). A true and correct copy of Robbins-Meyer’s July 11, 2017 memorandum to all SEIU Local 221 members is attached hereto, marked as **Exhibit D**, and is incorporated by reference as though fully set forth at length therein.

12. On or about July 11, 2017, after Robbins-Meyers issued her grossly misleading memorandum that bypassed and sought to undermine SEIU Local 221, SEIU Local 221 issued a statement to members. It explained that, per Robbins-Meyer’s rescission memorandum dated July 11, 2017, the status quo had been restored, specifically the long-standing past practice of

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Appendix to First Amended PERB Charge

there being no dress code in the County, and employees having the freedom to wear to work flip flops, shorts, tank tops, tights, beach or athletic wear.

13. Despite Robbins-Meyers herself declaring that the status quo had been restored for SEIU Local 221-represented employees immediately, the following day, July 12, 2017, scores of managers directed their employees not to wear casual clothing of any kind to work. The managers promulgated a total prohibition on casual clothing.

14. A unilateral change is considered a per se violation when: (1) the employer breached or altered past practice; (2) the action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the action is not merely an isolated incident, but amounts to a change of policy (i.e. having a generalized effect or continuing impact on terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*City of San Juan Capistrano* (2012) PERB Decision No. 2238-M, at Warning Letter p. 2.)

15. The County committed a unilateral change when it changed the past practice regarding the dress code. Prior to June 20, 2017, the County never adopted any dress code applicable to all County employees.

16. The County provided SEIU Local 221 no prior notice or opportunity to bargain over this change in the dress code.

17. As the County's memorandum and email indicate, this is a change of policy that will have a generalized effect on SEIU Local 221's members.

18. The change in policy concerns a mandatory subject of bargaining—specifically the dress code. (*Poway School Emps. Ass'n v. Poway Unified School Dist.* (2017) PERB Decision No. 2528 [finding that the “Association has asserted a prima facie case that the [School] District made a change in policy with respect to the promulgation of a dress code without affording the Association notice or an opportunity to meet and negotiate thereon.”]).

19. The County again committed a unilateral change when on July 12, 2017 managers throughout County departments and divisions implemented Robbins-Meyer's July 11, 2017 memorandum as being an absolute prohibition on the wearing of casual clothing by SEIU Local 221 members. The managers banned the wearing of casual clothing, despite there being a past practice in those departments or divisions of wearing summer casual clothing including but not limited to flip flops, shorts, tank tops, tights, beach or athletic wear. If the department/division managers were not mischaracterizing Robbins-Meyer's July 11, 2017 directive, and instead were implementing it as she intended, then the second unilateral change occurred by and through Robbins-Meyer's July 11, 2017 memorandum.

20. The County bypassed and sought to derogate SEIU Local 221's authority by, on July 11, 2017, sending a defamatory memorandum to SEIU Local 221's members which, misstated the past practice regarding dress code, mischaracterized the “Cool Summer Days 2017” policy as loosening dress code requirements rather than imposing restrictions for the very first time, blaming SEIU Local 221 for causing the rescission of [the County's mischaracterized]

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Appendix to First Amended PERB Charge

“Cool Summer Days 2017” policy, and penalizing only SEIU Local 221 members by suggesting that other employees in the County would enjoy a loosening of dress code requirements but SEIU Local 221 members would not. The County also sought to create a policy of general application – pertaining to dress code – by communicating directly to members a proposal it had never presented to SEIU Local 221.

21. An employer may not communicate proposals to employees before first submitting them to the exclusive representative, seek to bargain directly with employees, or invite them to abandon their representative to achieve better terms directly from their employer. (City of San Diego (2010) PERB Decision No. 2103-M, slip op. 7.) An employer violates the duty to bargain in good faith when it bypasses the exclusive representative to negotiate directly with employees over matters within the scope of representation, such as dress code. (Id.)

22. The Robbins-Meyer memorandum and the County managers’ directives to employees do not constitute protected employer-speech, as those communications contained a threat of reprisal or force or promise of benefit. The County’s communications are not deserving of protection.

WHEREFORE SEIU Local 221 respectfully requests that a complaint issue against the County on the grounds that it violated Sections 3502, 3503, 3505 of the MMBA, and PERB Regulations 32603(a), (b), (c) and (g) by failing to provide notice and an opportunity to meet and confer over the decision and impacts of the aforementioned change in policy, and unilaterally implementing those changes.

PERB should order the County to:

- i. Cease and desist from its unlawful activities and restore the *status quo ante* by rescinding the aforementioned policy, which means that there shall be no dress code policy whatsoever in the County departments and divisions, and that the past practice of employees being permitted wear summer casual, comfortable clothes to work shall be restored;
- ii. Rescind the “Cool Summer Days in the County” summer dress code, which means the County must rescind its restrictive policy that permits only “appropriate business casual attire,” which the County defines as “[c]asual clothing, such as jeans (including colored jeans) and sneakers of any kind.” Once the “Cool Summer Days in the County” summer dress code is rescinded, the County must restore the status quo as described in paragraph (i) above;
- iii. Post the customary notices at all locations where SEIU Local 221 represented employees are assigned. Per *City of Sacramento* (2013) PERB Dec. No. 2351-M, the County should be obligated to provide notice to employees of its unfair practices through all regularly used communication channels including email, intranet, websites, or other electronic means. SEIU Local 221 also requests that PERB order the County to make spoken notice to member-employees, which is a customary way that management communicates with employees; and

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Appendix to First Amended PERB Charge

- iv. All other remedies which are just and proper, consistent with PERB's broad remedial authority.

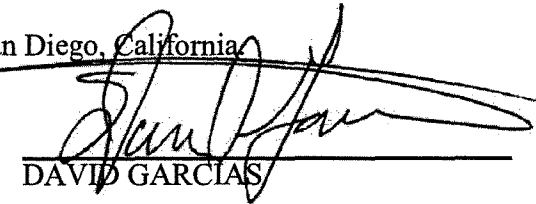
143530\921642

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
VERIFICATION OF FIRST AMENDED UNFAIR PRACTICE CHARGE
PERB CASE No. LA-CE-1193-M

I, David Garcias, am the President of Service Employees International Union, Local 221 ("SEIU Local 221"), Charging Party in the above-entitled action. I have read the foregoing First Amended Unfair Practice Charge of SEIU Local 221, and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true. If called as a witness, I could testify competently regarding the matters alleged in the charge.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on this 12th day of July 2017, at San Diego, California



DAVID GARCÍAS

143530\922828

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Change to Dress Code

PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. TBD

Exhibit A

**To Unfair Practice Charge against
County of San Diego**



LABOR RELATIONS ORDINANCE

Ordinance No. 10247

January 29, 2013

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Change to Dress Code

PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. TBD

Exhibit B

**To Unfair Practice Charge against
County of San Diego**



County of San Diego

HELEN N. ROBBINS-MEYER
CHIEF ADMINISTRATIVE OFFICER
(619) 531-6226
FAX (619) 557-4080

CHIEF ADMINISTRATIVE OFFICE
1600 PACIFIC HIGHWAY, SUITE 209 SAN DIEGO, CA 92101-2422

DONALD F. STEUER
ASST. CHIEF ADMINISTRATIVE OFFICER/
CHIEF OPERATING OFFICER
(619) 531-4940
FAX (619) 657-4080

June 13, 2017

TO: All County Employees
FROM: Helen N. Robbins-Meyer *Helen*
Chief Administrative Officer

COOL SUMMER DAYS 2017

As we have a County tradition to dress "cool" during our summer months, I am again declaring June 20 through September 21 as "Cool Summer Days in the County".

Effective Tuesday, June 20, 2017, the County's observance of appropriate business casual attire, normally in place only on Fridays, will be extended to apply to every workday through September 21, 2017.

If you are scheduled for meetings or other activities that require business attire, I will continue to expect you to dress accordingly. As always, each Appointing Authority is responsible for establishing dress rules within their individual departments.

Enjoy our wonderful San Diego weather and have a great and cool summer 2017!

SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
Change to Dress Code

PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. TBD

Exhibit C

**To Unfair Practice Charge against
County of San Diego**



Secured Message

Reply

ReplyAll

Forward

From: Scott, Mary Jane**Sent:** Tuesday, June 20, 2017 3:56 PM**To:** HHSA-DL, East Region; HHSA-DL, HCA-HOS; HHSA-DL, North Central FRC; HHSA-DL, Document Processing Center LG; Aber, Margaret; Amaro, Catherine; Burnett, Debbie; Cabanas, Yvette; Chase, Donna; Cristobal, Eileen; Cuatico, Cheri; Curry, Angel; Equipado, Krisanto (HHSA); Garcia, Erika; Grasse, Libby; Joseph, Leela; Kellum, Lisa; Lomer, Beatrice; Losoya, Julietta; Mumman, Manpreet; Navala, Jennifer; Pasamonte, Debbie; Phan, Sheena; Ramirez, Roberto; Rooney, Shauna; Ruezga, Rosalinda; Sandoval, Regina; Stroman, Sheleen; Verneti, Lindsay; Walia, Charanpreet; Zurek, Thomas**Subject:** 2017 Cool Summer*Sending to you on behalf of Kimberly Gallo,*

As we move into warmer weather, I want to take this opportunity to remind everyone of the expectation for you to maintain a professional appearance in the workplace. Staff are permitted to wear office appropriate business casual apparel during the work week. Casual clothing, such as jeans (including colored jeans) and sneakers of any kind should be reserved for Fridays - except during "Cool Summer Days in the County." Clothing that is not permitted at any time includes but is not limited to flip flops or other unsafe shoes, shorts, tank tops, tights, beach or athletic wear and torn or revealing clothing. It is your responsibility to use your best judgement in dressing appropriately. If you are uncertain if an article of clothing is appropriate, chose something else or ask your supervisor or manager before wearing. There is also an LMS online training is called "[Extreme Makeover: Professionalism from the Inside Out.](#)"

Please let your Supervisor, Manager or Departmental Human Resources Officer know if you have questions or concerns.

Thank you,

Kimberly Gallo, Director
East & North Central Regions
County of San Diego Health & Human Services Agency
O: 619-668-3866

**From:** Dept of Human Resources**Sent:** Thursday, June 15, 2017 11:49 AM**Subject:** 2017 Cool Summer

**SEIU LOCAL 221 v. COUNTY OF SAN DIEGO
PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. LA-CE-1193-M**

Exhibit D

**To First Amended Unfair Practice
Charge against County of San Diego**



County of San Diego

HELEN N. ROBBINS-MEYER
CHIEF ADMINISTRATIVE OFFICER
(619) 531-6226
FAX: (619) 557-4060

CHIEF ADMINISTRATIVE OFFICE
1600 PACIFIC HIGHWAY, STE. 209, SAN DIEGO, CA 92101-2472

DONALD F. STEUER
ASST. CHIEF ADMINISTRATIVE OFFICER/
CHIEF OPERATING OFFICER
(619) 531-4940
FAX: (619) 557-4060

July 11, 2017

TO: SEIU-Represented Employees (AE, CL, FS, HS, MM, PR, PS, RN, SS,
and SW Bargaining Units)

FROM: Helen N. Robbins-Meyer *HNM*
Chief Administrative Officer

RESCISSION OF COOL SUMMER DAYS 2017

On June 13, 2017, I issued a memo entitled "Cool Summer Days 2017." Due to its popularity, I continued a County tradition dating back over 15 years whereby employees are given the option to dress casually all summer long due to the warmer weather. Employees are not required to do this; it is only optional. Otherwise, employees must dress according to the usual and customary practice for their applicable division or department. In the last fifteen years, or even in the month since the most recent memo was issued, no complaint has been made by SEIU.

On July 3, 2017, SEIU filed an unfair labor practice charge with the Public Employment Relations Board alleging that the Cool Summer Days tradition was not negotiated with SEIU and therefore, is unlawful. The County disagrees. The Cool Summer Days is an established past practice dating back over at least 15 years. Further, it is not a mandatory practice, but is only optional for employees. To date, SEIU has never asked to meet and confer on the established practice. SEIU has demanded that the County "rescind the 'Cool Summer Days in the County' summer dress code."

While the County believes SEIU's unfair practice charge is without merit, in order to maintain positive labor relations with SEIU, the Cool Summer Days summer dress option is rescinded for SEIU-represented employees as demanded by SEIU. SEIU-represented employees will continue to follow their usual and customary practices for their division or department immediately.

HRM:SMB:ab