STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

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 ☐ NO ☑

1. CHARGING PARTY: EMPLOYEE ☐ EMPLOYEE ORGANIZATION ☑ EMPLOYER ☐ PUBLIC[1] ☐

a. Full name: International Federation of Professional and Technical Employees, Local 21

b. Mailing address: 1330 Broadway, Suite 1450, Oakland, CA 94612

c. Telephone number: (510) 272-0169

d. Name, title and telephone number of person filing charge: Peter Saltzman, (510) 272-0169

e. Bargaining unit(s) involved: Supervisory and Non-Supervisory Units

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

a. Full name: Contra Costa County

b. Mailing address: 651 Pine St., 3rd Fl., Martinez, CA 94553

c. Telephone number: (925) 335-1766

d. Name, title and telephone number of agent to contact Ted Cwick, HR Director

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.

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.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:

3506, 8 Cal. Code Reg. 32603(a), (b), (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***):

34-22.002

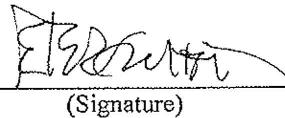
d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not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

Please see attachment to Unfair Practice Charge.

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 12/14/09
(Date)

at Oakland, California
(City and State)



Peter Saltzman
(Type or Print Name) (Signature)

Title, if any: Counsel

Mailing address: 1330 Broadway, Suite 1450, Oakland, CA 94612

Telephone Number: (510) 272-0169

ATTACHMENT TO UNFAIR PRACTICE CHARGE

I. Introduction and Background

Beginning in 2008, approximately 752 Contra Costa County employees in various management classifications sought union representation. After a card check election conducted by the State Mediation Service, on June 23, 2009, the Board of Supervisors granted formal recognition to Local 21 as the exclusive representative of those employees, who were organized into two new bargaining units.

As part of the County's budget process, the Board of Supervisors periodically adopts one or more salary ordinances providing compensation and benefits for elected and appointed department heads, management employees, exempt employees and unrepresented employees. The relevant salary ordinance in effect prior to Local 21's recognition by the County was Resolution No. 2009/26 ("R 26", relevant portions of which are attached as Exhibit A). Under section 2.12(b) of R 26, the County's share of health insurance premiums for employees covered under the Resolution was to be frozen at 2009 levels – and the employees' share was to be increased commensurately – beginning in January 2010.

At the same time, in or about June 2009, the County concluded negotiations for successor contracts with other County unions in the "Coalition Bargaining Group" -- which includes AFSCME Locals 512 and 2700, Public Employees Union Local One, SEIU Local 1021, and the Western Council of Engineers. Consistent with the County's past practice of conforming the salary ordinances to the benefits negotiated with its unions, on July 21, 2009, the Board of Supervisors amended R 26 with Resolution 2009/341 ("R 341", relevant portions of which are attached as Exhibit B.) Among other things, R 341

changed section 2.12(b) and related provisions of the salary ordinance to align the health benefits for most department heads, management employees, exempt employees and unrepresented employees to the higher levels agreed to between the County and the Coalition Bargaining Group.

Alone among all County employees, members of the two new units represented by Local 21 were excluded from coverage under R 341. In discussions with representatives of Local 21 since that time and continuing, the County has taken the position that its bargaining obligation prevents it from providing members of the new units with the benefits included in R 341 without reaching agreement with Local 21 on a first collective bargaining agreement as a whole. Until such an agreement is reached, the County maintains, it will apply the terms of R 26 to members of the new Units beginning in January 2010, thereby imposing on them, and on them alone, an increase in the employee share of health insurance premiums to the highest levels of all County employees. The increase in the employees' share of health insurance premiums under R 26 is dramatic, and in many cases will double the employee's monthly costs for health care coverage.

The law is clear that differential treatment of employees due to the exercise of their right to organize and bargain collectively under the Meyers-Milias-Brown Act (MMBA), as has happened here, is *per se* discrimination under the Act. As noted below, the County's bargaining obligation does *not* prevent it from providing members of the Units with the same health insurance benefits as all other County employees, even if those terms may later be changed through collective bargaining. In fact, by refusing to make those benefits available to members of the two units absent agreement on a contract as a whole, the County has engaged in unlawful discrimination under the Act and undermined support

for collective bargaining over a first contract, a process that will form the foundation for the parties' future labor-management relationship.

II. Statement of the Charge

Section 3506 of the Act provides: "Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502." Section 3502, in turn, states in part: "Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations."

Looking to federal labor law for guidance in interpreting the non-discrimination provisions of the MMBA, the California Court of Appeals has taken note of the Supreme Court's opinion in NLRB v. Great Dane Trailers (1967) 388 U.S. 26. There, the Supreme Court held that an employer who grants a benefit to all employees except those who have exercised a protected right under the National Labor Relations Act is "'discrimination in its simplest form' and discrimination likely to discourage union membership. 'The act of paying accrued benefits to one group of employees while announcing the extinction of the same benefits for another group of employees who are distinguishable only by their participation in protected concerted activity surely may have a discouraging effect on either present or future concerted activity.'" City of Campbell Municipal Employees Assn., supra, 131 Cal.App.3d at 423 (citing NLRB v. Great Dane Trailers, supra at 32.) Campbell also adopted the Court's statement that if "an employer's discriminatory conduct is "'inherently destructive' of important employee rights, no proof of antiunion motivation

is needed and the Board can find an unfair labor practice even if the employer introduces evidence that the conduct was motivated by business considerations.'" Id. (citing Great Dane Trailers, supra at 34.)

In accord with Great Dane Trailers and City of Campbell, the failure to provide a benefit to a group of employees due to the exercise of their rights under Section 3502, as happened here, is *per se* discrimination under the Meyers-Milias-Brown Act. Thus, in City of Campbell itself, the city council had implemented wage and benefit increases with a favorable retroactivity date for the members of all unions except one, that one being the only union which had gone to impasse in bargaining. Under these circumstances, the Court readily concluded that the City had discriminated against the members of the one union in violation of section 3506. Municipal Employees Assn. v. City of Campbell, supra at 424.

In a different case whose facts closely parallel those here, the City of San Leandro adopted an incentive pay program for all management employees except members of the police and fire organizations, the only management employee organizations in existence at that time: "Under the plan adopted by the city council, all non-organized management employees were to receive an additional 3 percent of their monthly salary as a 'management incentive,' but the benefit was withheld from those management employees who had determined to exercise their rights under the Meyers-Milias-Brown Act and join an employee organization." San Leandro Police Officers Assn. v. City of San Leandro (1976) 55 Cal.App.3d 553, 557-558, 127 Cal.Rptr. 856. Again, the Court had no difficulty in concluding that the city's action "interfered with and discriminated against a group of employees by reason of their decision to exercise their right to participate in employee

organizations, thereby violating Government Code section 3506." The same is true here: the County has plainly interfered with and discriminated against the members of the two new units by reason of their decision to be represented by Local 21.

Notwithstanding the discriminatory impact of its actions, the County maintains that its bargaining obligation prevents it from altering what it views as the status quo prior to its recognition of Local 21. This position rests on two fallacies. First, the County misconstrues the nature of the "status quo" prior to the recognition of Local 21 on June 23, 2009. Already prior to that date, the County knew that it had negotiated health insurance benefits with members of the Coalition Bargaining Group that were superior to those provided under R 26; moreover, consistent with its past practice, the County was already planning to amend R 26 – and did amend R 26 less than one month later -- to conform the health insurance and other benefits for elected and appointed department heads, management employees, exempt employees and unrepresented employees to those negotiated with the Coalition members. PERB has held that under circumstances such as these, an employer engages in unlawful discrimination by withholding a planned increase from the members of a newly certified or recognized union. University Professional and Technical Employees (UPTE), CWA Local 9119 v. Regents of the University of California (1997) PERB Decision No. 1188-H (holding that the University had violated the analogous non-discrimination and non-interference provisions of the Higher Education Employer-Employee Relations Act (HEERA) by refusing to grant a salary increase to unit employees who elected UPTE as their exclusive representative.)

Second, even assuming that the County were correct in its characterization of the status quo, the fact that an employer may not unilaterally impose terms and conditions of

employment does *not* mean that it is prohibited from providing a benefit to bargaining unit members even if the parties may later change that benefit through collective bargaining. In fact, as already noted, failure to make a benefit available to members of a bargaining unit under circumstances such as are present here constitutes unlawful discrimination. This same point was made in Justice Butler's concurrence in Social Services Union v. County of San Diego (1984) 158 Cal.App.3d 1126, 205 Cal.Rptr. 325. There, the County of San Diego amended its salary ordinance to provide holiday benefits only to those employees who were either unrepresented or who had already signed collective bargaining agreements. Justice Butler wrote:

> [T]he county's enactment of the salary ordinance extending the olive branch of paid holidays to those organizations signing memoranda of agreement before December 24, 1982 is a classic exercise in coercive tactics intended to result in a loss of benefits to members of those employee entities who chose to fight rather than sing Christmas carols at the doors of members of the board of supervisors. A penalty is imposed upon those employees because their bargaining units had not come to terms with the county. This is a clear violation of Government Code section 3506. (Id at 1132)

Likewise, by threatening the members of the two new units who elected Local 21 to represent them with a loss in benefits, the County has engaged in a clear violation of Section 3506 of the Act and undermined support for collective bargaining over a first contract.

III. **Remedy**

To remedy the County's unlawful discriminatory conduct and to restore the integrity of the bargaining process, charging party requests an order requiring the County to provide members of the two new bargaining units with the same health insurance benefits as are provided to all other County employees during the pendency of the parties' first contract negotiations.