



## Kaiser Contract Update

*May 24, 2020*

Almost 1,300 members participated in two Saturday 90-minute town halls regarding Kaiser's delay in implementing our contract. We've provided a recap below, divided into three sections, plus a note on next steps.

1. Opening comments from NUHW President Sal Rosselli, NUHW General Counsel Jonathan Siegel, and Ken Rogers, a psychologist at Kaiser in South Sacramento, who was a bargaining team member during our last two contract campaigns.
2. A full recap of questions posed by members and the answers to those questions. This Q&A reflects all questions posed by members during both the Northern California and Southern California town halls.
3. Sentiments expressed by members who spoke during both town halls.

### **NUHW President Sal Rosselli**

Sal provided [a timeline](#) of the events over the past few months. The timeline shows that the mutual non-disclosure side agreement (side letter) was not part of the final documents that Kaiser sent to us for ratification on April 21, and that Kaiser first mentioned the side letter on April 23.

Sal reiterated that Kaiser had never mentioned this side letter during negotiations and Kaiser officials had never indicated that they viewed it as part of the final agreement. Sal said we have recorded statements from a Kaiser official acknowledging that we have a contract and that Kaiser Vice President John Garcia was telling lawmakers in Sacramento that we had a ratified contract.

Sal said that he is convinced Kaiser is withholding raises and refusing to immediately implement our contract in hopes that our members will pressure stewards to sign the side letter. Sal also said it was no coincidence that ballots in the UNAC decertification election for our 400-member professional unit went out the same day that Kaiser informed everyone it wasn't immediately implementing the contract. Kaiser managers have been colluding with UNAC officers and staff since January to try to decertify NUHW in Southern California.

Sal reiterated that we're not interested in escalating a campaign against Kaiser executives. We are re-committing to try to work in collaboration with Kaiser to make it the best place to give and receive mental health care. But Kaiser needs to show good faith by implementing the contract, setting up the six-month collaborative process to reform Kaiser's mental health system, and respecting our right to tell the truth about Kaiser or communicate with Kaiser patients.

### **NUHW General Counsel Jonathan Siegel**

Jonathan said that Kaiser is flouting bedrock principles in labor law, and that there is no legal precedent to support its position that we do not have a contract unless we sign the mutual non-disclosure side agreement. He said that Kaiser doesn't care that the law is on our side. Kaiser is trying to bully us to agree to the side letter before it's litigated at the NLRB. If Kaiser drags this out with legal proceedings, Jonathan is confident that everyone will get their full raises with interest.

Although NLRB rulings often vary based on whether the five-member board has a Republican or Democratic majority, Jonathan said that Kaiser's position violates bedrock principles that don't change no matter which party has a majority.

1. The key bedrock principle is that when a final offer is made, it has to be complete, Jonathan said. When we ratified Kaiser's final offer without reservation, the law was very clear that we had a contract. It was a done deal, Jonathan said, and Kaiser does not have the legal right to say otherwise. We even received a voicemail from Kaiser Vice President Dennis Dabney telling us that the complete contract was ratified.
2. The side letter Kaiser is trying to get us to sign is not a required component of contract negotiations. Legally, we don't have to bargain over it, and Kaiser can't refuse to sign a contract because we won't bargain over it.

### **NUHW Member Ken Rogers**

Ken explained the very different climate that existed when IBHS members in Northern California agreed to a similar side letter in 2015 compared to the current situation. Ken noted that in 2015, we reached a contract agreement in Northern California that averted an open-ended strike and included concessions from both sides.

Management (then Northern California President Greg Adams, with mediation assistance from former State Senate President Darrell Steinberg) approached us about building a better, more trusting relationship, and the side letter was agreed to in the spirit of building a truly collaborative relationship. Ken clarified that in 2015, our members agreed to the side letter, but that it was not a condition for implementing the contract. Ken added that the agreement in 2015 "felt like more of an exchange... we were trying to do something different and build something different."

Unfortunately, Ken added, the trust that had been built up over the first couple years after the contract has eroded over the past 18 months. Ken said that it's important to understand that we're dealing with an employer who thinks they can do anything. "They're not following the law," he said. "I can't give in one more time."

**Questions and Answers** (answers are from Sal unless Jonathan Siegel is referenced)

**Q: Is the side letter so bad that we can't just sign it and work toward the next round of bargaining in 2021? Is Kaiser only trying to shut down KaiserDontDeny.org?**

A: It's not abnormal for unions and employers to sign agreements after settling a contract to stop certain activities such as criticizing board members or executive salaries. But what Kaiser is asking us to do is stop talking to journalists, elected officials and Kaiser patients, including the more than 1,000 Kaiser patients who provided testimony through [KaiserDontDeny.org](https://www.kaiserdontdeny.org) about the problems with access to care.

For example, that work has helped spur a proposed bill that would require all insurers to provide return mental health appointments within 10 business days. Under the side letter, we also wouldn't be able to communicate with patients to support that bill or other mental health reform bills pending before the state legislature. Additionally, we wouldn't be able to coordinate with patients to support the DMHC investigation of Kaiser's violations regarding access to care.

**Q: Will members get to vote on whether or not to accept the side letter?**

A: We will convene a meeting with all elected stewards Saturday and they will determine next steps including whether or not to hold a vote of the entire bargaining units. While many unions routinely make secret top-down agreements with employers, that is not how NUHW operates. We will make this decision — as we make all our decisions — democratically with full transparency.

**Q: Why weren't members immediately informed of the side letter, when Kaiser first requested it one day after submitting its final offer for ratification?**

A: Stewards were informed about the side letter, and we dismissed it because we knew Kaiser had no legal standing to ask us to sign a side letter. We never imagined they would make it an issue because to do so was blatantly illegal.

**Q: Given the recession and Kaiser's reported loss in investment income during the first three months of this year, is there an increased risk of NUHW members getting laid off if we don't agree to the side letter?**

A: Kaiser's reported investment loss during the first quarter of this year is connected to the sharp drop in stock prices, which have recovered somewhat recently. Kaiser had a net profit from its operations during the first quarter, and it understands that it needs more mental health clinicians and healthcare professionals to meet rising demand for services. Our concern isn't that Kaiser will lay off workers. It's that, if we agree to the side letter in its entirety, Kaiser will gain more power to do what it wants and make critical decisions based purely on profit, as opposed to the judgement of clinicians and healthcare professionals.

**Q: What legal argument might Kaiser have to claim that the side letter is a component of the final contract offer?**

A: Jonathan Siegel responded that we have a "whole trove of documents to show that is not true." He said that Kaiser "would need a Hail Mary to make the NLRB to change the law."

**Q: Why is Kaiser trying to apply the side letter to Southern California, when the two Southern California bargaining units never agreed to a side letter in 2015?**

A: Kaiser flat-out lied in the letter it sent out last week. In 2015, the side letter only pertained to IBHS. Jonathan Siegel said that with respect to our Southern California bargaining units, Kaiser's legal claim is "more ridiculous" because it's trying to claim that they can't reach an agreement because of something that wasn't part of its previous contract.

**Q: Would the side letter affect investigations into Kaiser by the California Department of Managed Health Care?**

A: It could affect the current investigation, because it would also forbid us from reaching out to patients now and in the future. It would also forbid us from maintaining KaiserDontDeny.org, and organizing patients toward supporting future investigations.

**Q: What could we get from Kaiser in order to agree to the side letter?**

A: We could bargain over the side letter, if we collectively decide to take that approach. Kaiser initially offered reimbursing members of our bargaining committee for the time they spent bargaining in March, if we agreed to sign the side letter.

**Q: How long could this take to work its way through the NLRB and be fully resolved?**

A: Jonathan said that the first step would be for an NLRB agent to review the facts and file a complaint against Kaiser. That would probably take about a month. Kaiser could then demand a trial, which could take six months. Assuming Kaiser loses at the regional level, if it wanted to go “scorched earth,” it could appeal to the five-member NLRB Board in Washington, D.C. Jonathan is still very confident we’d win on appeal because the issues involved in the case are core legal principles.

Sal added that we would not simply sit quietly while the legal process played out. We would organize, file affidavits, and put pressure on Kaiser to implement the contract. Kaiser executives such as John Garcia and Dennis Dabney could be forced to testify under oath about Kaiser’s illegal refusal to immediately implement our contract.

**Q: Can we take content down from KaiserDontDeny.org and move it to a different website? Do we have good data from that site that we can use even if we no longer have the site?**

A: We would have to take down the website and would be prohibited from setting up a new one. The side letter in its current form would also prevent us from talking to those patients we organized through the website.

**Q: Do we have recourse to ask for punitive actions against Kaiser?**

A: Jonathan replied that we can be “made whole,” including interest on owed wage increases, but we cannot get punitive damages under NLRB rules.

**Q: If we signed the side letter, would it still be in effect if we are bargaining with Kaiser after our contract expires in 2021?**

A: No, the side letter would expire when our contract expires. But it’s an illegal act to make us sign it as a condition of implementing the contract.

**Overall Sentiment (Southern California)**

Speakers overwhelmingly opposed agreeing to the side letter. Here are several comments from members:

**NUHW member from Burbank** — “I’m so angry about how they are insulting the integrity and intelligence of our bargaining unit members.”

**NUHW member from Riverside** — “This is absolutely reprehensible. I feel like I’m in a one-way narcissistic, abusive relationship. I think it’s time for the membership to push back and take them to court.”

**NUHW member from San Diego** — “Our most powerful tool is to go out to the media, out to the politicians. With a gag order in place, they have us.”

**NUHW member from Bakersfield** — “I’m absolutely disgusted with Kaiser when I didn’t think there was a lower floor for my disgust.” The member mentioned that Kaiser has tried to not implement raises before, and lost. “This is an old play in the playbook. They knew they would lose then. They know they will lose now. They are doing it because they think we’ll give in ... and that makes me sick.”

**NUHW member from Irvine** — “To me it’s corporate gangsterism. It’s very nefarious.”

**NUHW member from Santa Ana** — “We’re in an honest union... we have to stand up and fight.”

#### **Overall Sentiment (Northern California)**

Members who spoke in Northern California expressed anger over Kaiser’s actions. But there was debate over whether to agree to the side letter, with a majority of members who spoke being opposed.

Several members urged that the decision go to a full vote of membership.

Here are several arguments that were made in support of signing the letter:

1. The side letter is a trap by Kaiser to divide the union. The protracted fight over the letter will undermine union solidarity and fuel a decertification drive.
2. There are members who can’t afford to put principles above their need for a raise right away.
3. As upset as members are over Kaiser’s action, we would be better off taking this punch in the face now, rebuilding our strength, and improving our internal organizing to be better prepared to battle Kaiser when our contract expires next year.

Here are several arguments that members made in opposition to signing the letter:

1. A member who has worked at Kaiser for four decades said that the side letter is an attempt to kill off our union. The member added that it’s important that NUHW continue to stand on principle and that if NUHW members accede to Kaiser’s illegal behavior, we will become weaker.
2. It’s better to be part of a union that takes principled action than to give in to Kaiser.
3. We have legal and ethical reasons not to give in to Kaiser.
4. Taking down KaiserDontDeny.org silences patients who have been so courageous and deprives us of one of the most important and valuable tools we’ve had.
5. If we agree to the side letter, Kaiser will demand more from us, and we’ll be prevented from speaking out.