File No. 120519 Committee Item No. 26
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight **Date** June 14, 2012

Board of Supervisors Meeting **Date** _____

Cmte	Board	
☐	☐	**Motion**
☐	☐	**Resolution**
☒	☐	**Ordinance**
☐	☐	**Legislative Digest**
☐	☐	**Budget and Legislative Analyst Report**
☐	☐	**Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form (for hearings)**
☒	☐	**Department/Agency Cover Letter and/or Report**
☒	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☐	☐	**Contract/Agreement**
☐	☐	**Form 126 – Ethics Commission**
☐	☐	**Award Letter**
☐	☐	**Application**
☐	☐	**Public Correspondence**

OTHER **(Use back side if additional space is needed)**

☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Completed by: Alisa Miller **Date** June 8, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

FILE NO. 120519 ORDINANCE NO.

[Memorandum of Understanding - International Union of Operating Engineers Stationary Engineers, Local 39]

Ordinance adopting and implementing the arbitration award establishing the Memorandum of Understanding between the City and County of San Francisco and the International Union of Operating Engineers Stationary Engineers, Local 39, to be effective July 1, 2012, through June 30, 2014.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Board of Supervisors hereby adopts and implements the arbitration award establishing the Memorandum of Understanding between the City and County of San Francisco and the International Union of Operating Engineers Stationary Engineers, Local 39, to be effective July 1, 2012, through June 30, 2014.

The arbitration award establishing the Memorandum of Understanding so implemented is on file in the office of the Board of Supervisors in Board File No. 120519.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Elizabeth S. Salveson
ELIZABETH S. SALVESON
Chief Labor Attorney

STATIONARY ENGINEERS, LOCAL 39 BARGAINING HIGHLIGHTS

Term – Two year term (July 1, 2012 to June 30, 2014).

Wages –

Fiscal Year 2012-2013 – No wage increases

Fiscal Year 2013-2014 –

- 1% on July 1, 2013
- 1% on January 4, 2014
- 1% on March 29, 2014

Structural Reform of the City's Healthcare Benefit and Cost-Sharing Structures –

- Health care cost sharing effective January 1, 2014:
  - For "medically single employees" (Employee Only) enrolled in any plan other than the highest cost plan, the City shall only contribute ninety percent (90%) of the "medically single employee" (Employee Only) premium for the plan in which the employee is enrolled.
  - For "medically single employees" (Employee Only) enrolled in the highest cost plan, the City shall only contribute ninety percent (90%) of the "medically single employee" (Employee Only) premium for the second highest cost plan.
- Elimination of the medically-single/Employee Only in lieu monetary cash payment of $190, effective June 30, 2014.
- Dental
  - $5/month premium contribution for Employee-Only;
  - $10/month premium contribution for Employee + 1 Dependent; and
  - $15/month premium contribution for Employee + 2 Dependent.

italics = moved existing language	**bold, double underline** = new language
~~*struck out, italics*~~ = existing language prior section	~~struck out~~ = removed language

Jerilou H. Cossack
Arbitrator, Mediator, Factfinder
925-939-1904

OPINION AND AWARD IN ARBITRATION
PURSUANT TO
SAN FRANCISCO CITY CHARTER SECTION A8.409-4

In The Matter of a Controversy Between: CITY AND COUNTY OF SAN FRANCISCO Employer and STATIONARY ENGINEERS LOCAL 39 Union	)	Interest Arbitration for the 2012 Collective Bargaining Agreement

APPEARANCES:

For the Employer: Stacey Lucas, Esquire
Deputy City Attorney – Airport Division
Office of the City Attorney
International Terminal, 5th Floor
PO Box 8097
San Francisco, CA 94128-8097

For the Union: Stewart Weinberg, Esquire
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
alameda, CA 94501-1091

STATEMENT OF PROCEDURE

Pursuant to San Francisco City Charter Section A8.409-4, when the City and one of its unions reach an impasse with respect to the negotiation of the terms and conditions of a new Memorandum of Understanding ("MOU"), the parties are required to submit their dispute to binding arbitration before a three-member Arbitration Board comprised of a Neutral Arbitrator, one City representative and one Union representative. In response to these obligations, the parties selected Jerilou H. Cossack to sit as the Neutral Arbitrator, Joan Bryant as the Board member for Local-39, and Christina Fong as the Board member for the City.

The parties met on May 10, 2012 and attempted to negotiate the terms of the new MOU with the assistance of the Neutral Arbitrator acting in the capacity of a mediator. Although the parties were able to come to agreement on a number of issues, several issues were not resolved through negotiation and impasse was declared.

The Board then convened an arbitration hearing that same day. During the course of the arbitration, the parties had an opportunity to present evidence and to cross-examine witnesses. At the conclusion of the hearing, the parties submitted their Last, Best and Final Offers ("LBFO") to the Arbitration Board. Under Charter Section A8.409-4(d), following the submission of each party's LBFO:

> The Board shall decide each issue by a majority vote by selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence presented during the arbitration most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco; health and safety of employees; the financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the

Mayor's budget analyst and the budget analyst for the Board of Supervisors; other demands on the City and County's resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancements or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the Arbitration Board. In addition, the Board shall issue written findings on each and every one of the above factors as they may be applicable to each and every issue determined in the award. Compliance with the above provisions shall be mandatory.

RESOLVED AND WITHDRAWN ISSUES

A. RESOLVED ISSUES

During the arbitration hearing, the Union accepted the City's offer on the following City Proposals:

- City Proposal #7A – Dental
- City Proposal #12 – Duration
- City Proposal #13A – Housekeeping
- City Proposal #6D – Health Care[1]

The MOU shall be amended consistent with these three City proposals.

B. WITHDRAWN ISSUES

During the hearing, the City withdrew the following proposals:

- City Proposal #3C – Night Shift Differential
- City Proposal #3 (sic) – Standby Pay (aka City County Proposal#3A)
- City Proposal #8B – Overtime Compensation
- City Proposal #10A – Apprenticeship Salary Plan

LAST, BEST FINAL OFFERS

C. CITY'S LBFO - CONTESTED

1. WAGES One Percent (1%) wage increase effective 7/1/13; One Percent (1%) wage increase effective 1/4/14; and One Percent (1%) wage increase effective 3/29/14.

[1] As amended at the arbitration hearing. The amended proposal is set forth fully in Appendix A.

2. ACTING ASSIGNMENT PAY (pars. 117-118)

~~117. Any employee governed by the provisions of this MOU who is required to perform supervisory duties outside his/her classification in excess of fifteen (15) cumulative days during a rolling 12 month period shall be paid at the pay rate of the classification to which assigned.~~

~~118. Except for classes 7252, 7372, 7373, 7375, 7245, 7343, 7341, and 7339, Stationary Engineers and related classifications who perform the duties of classes 7252, 7372, 7373, 7375, 7245, 7343, 7341, or 7339 at a headworks facility or potable water treatment facility, or when operating or maintaining sewage pumps, shall receive, for the time spent in performing such duties, the equivalent rate of pay of the classification regularly assigned to such work.~~

117. Employees assigned by the Department Head or designee to perform a substantial portion of the duties and responsibilities of a higher classification shall receive compensation at a higher salary if all of the following conditions are met:

(1) The assignment shall be in writing.
(2) The position to which the employee is assigned must be a budgeted position.
(3) The employee is assigned to perform the duties of a higher classification for ten (10) consecutive working days, **after which acting assignment pay shall be retroactive to the first (1st) day of the assignment.**

118. Upon written approval by the Department Head, an employee shall be paid at a step of the established salary schedule of the higher class which is at least five percent (5%) above the employee's base salary but which does not exceed the maximum step of the salary schedule of the class to which the employee is temporarily assigned.

119. Requests for classification or reclassification review shall not be governed by this provision.

3. MULTIPLE LICENSE REQUIREMENT PREMIUM (Pars. 122 - 123)

122. Effective July 1, 20**12**, a premium of 7.5% percent shall be paid to all covered employees for possession of multiple licenses and certifications (excluding driver's licenses, CPR, harassment training, security certification/TSA) when required by the regulating body (i.e., Department of Public Health and State Water Resources Control Board), or required by the City in writing. This premium shall be applied to all ~~paid~~ hours **worked**.

123. A license or certification that is a minimum qualification for the position as set forth in the Civil Service class specification or the job announcement does not qualify for the multiple license premium.

4. **MTA PERFORMANCE INCENTIVES (par. 132):**

~~132. Consistent with Charter Section 8A.100, the Municipal Transportation Agency (MTA) and the Union agree that employees will be rewarded for the attaining of various service, performance and/or attendance goals and shall be compensated as set forth in Appendix B.~~

Appendix "B": MTA Performance/Attendance Incentives

~~**MTA PERFORMANCE/ATTENDANCE INCENTIVES**~~

~~A Performance Incentive Program is established for "service-critical" employees at the Municipal Transportation Agency (MTA) in each of the following Occupational Groups:~~

- ~~**Maintenance Group**~~
- ~~**Operations Group**~~
- ~~**Administration Group**~~

~~Goal percentage requirements and effective dates for Performance Incentives are updated in June of each year. Information regarding the goals and effective dates will be published and posted on the MTA website. Information on qualifying periods, rewards and/or compensation for Attendance Incentives will also be posted on the MTA website or are available in hard copy upon request of the Union.~~

E. **UNION'S LBFO – CONTESTED**

WAGES One Percent (1%) wage increase effective 7/1/13; One Percent (1%) wage increase effective 1/4/14; and One Percent (1%) wage increase effective 3/29/14 **plus two floating holidays during the first year of the contract.**

With respect to the City's LFBOs concerning Acting Assignment Pay, Multiple License Requirement Premium, and MTA Performance Incentives, the Union's LBFO is to maintain the status quo

SELECTION OF THE APPROPRIATE LAST, BEST AND FINAL OFFER AND DISCUSSION

The Board is required to select the Last, Best and Final Offer of either the Union or the City that, by a preponderance of the evidence presented during the arbitration, most nearly conforms to the factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment. These factors include, but are not limited to:

- changes in the average consumer price index for goods and services;
- the wages, hours, benefits and terms and conditions of employment of employees performing similar services;
- the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco;
- health and safety of employees;
- the financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the Board of Supervisors;
- other demands on the City and County's resources including limitations on the amount and use of revenues and expenditures;
- revenue projections; the power to levy taxes and raise revenue by enhancements or other means;
- budgetary reserves; and the City's ability to meet the costs of the decision of the Arbitration Board.

It is clear that the health and safety of employees does not have any relationship to the matters at issue. The heart of the matter is money.

The economic outlook for the City is dismal. City Controller Ben Rosenfield reports that the City has a current deficit for the fiscal year of 2012-2013 of $170 million. The deficit is

projected to grow to $312 million in fiscal year 2013-2014 and to $492 million in fiscal year 2014-2015. Rosenfield outlined that about half of the City's budget is budgeted in enterprise or special funds which are generally restricted to particular uses and are not available for general purpose spending, most notably funds to operate the San Francisco International Airport, the San Francisco Public Utility Commission, and the Municipal Transportation Agency. Revenues and balances in one fund type are typically not available for expenses, including increased labor costs, in another fund type. In addition, the San Francisco Charter establishes baseline funding levels for a number of city services and are indexed to overall growth or reduction in aggregate General Fund discretionary revenues. Funds set aside for these identified purposes further limit the unrestricted funds available to the Mayor and Board of Supervisors to appropriate for any general purpose, including labor costs outside of these departments.

Rosenfield identified several actions the City has implemented to meet its financial challenges since fiscal year 2007-2008. These include: reducing city services; deferring maintenance of streets, parks, and other infrastructures; spending down available reserves; not funding inflationary cost increases for non-profit organizations that the City contracts with to provide a host of health and human services; and slowing the overall increase in employee benefit costs through collective bargaining, ballot initiatives, and other means. Rosenfield noted that the City's General Fund subsidized workforce decreased by 931 full-time equivalent positions and is now at its lowest level in more than a decade.

The Mayor's Budget Director Kate Howard reports that the estimated General Fund deficit for fiscal year 2011-2012 was initially estimated to be $379.8 million. To address this deficit, the Mayor instructed City departments to reduce discretional General Fund support by 10 percent and to propose an additional 10 percent contingency. The Mayor's May 2010 Five-Year Financial Plan projected that absent corrective action, the City's General Fund deficit will grow to $829 million over the next five years. The plan, submitted by the Mayor and unanimously adopted by the Board of Supervisors recommended several strategies to create a greater structural balance in the City's budget, including: restructuring capital spending and debt; control

wage and benefit costs; additional tax, fee and other revenues; adjust baselines and revenue allocations; and limit non-personnel inflation.

With respect to the issue of wages, the City conducted a wage survey of Stationary Engineers classification 7334 among 15 other counties and cities. This is the same comparison sample which has been used by these parties for comparison for at least the past 10 years. The Union offered no evidence it had ever suggested any other cities and/or counties for comparison. That survey showed that the average annual maximum salary of the 15 comparable jurisdictions was $72,885, the average Local 39 annual maximum was $75,218 effective June 9, 2012, with San Francisco earning 3.2 percent more than the median annual maximum of the 15 comparable jurisdictions. The survey also showed the average total compensation of the 15 comparable jurisdictions to be $74,881 and the average total compensation of Local 39 classification 7334 stationary engineers to be $80,859, again effective June 9, 2012, with San Francisco stationary engineers earning 7.98 percent more than the those of the comparable jurisdictions.

Union Business Representative Gil Rojo testified that while the City contends Local 39 stationary engineers exceed the mean average of the comparable jurisdictions, their compensation is, in fact, close to the median average. Rojo further stated that the salary compensation of San Francisco stationary engineers is anywhere from $10 to $12 less than that paid to other stationary engineers in the City and County of San Francisco who work in the private sector.

The Union submitted a chart of San Francisco stationary engineers compared to journeymen in other bargaining units in the City and County represented by Plumbers, Electricians, Machinists, Bricklayers, Laborers, Sheetmetal Workers, Glaziers, Iron Workers, Operating Engineers, Pile Drivers, Plasterers, Stage Electricians, Painters and Carpenters. Looking solely at the comparisons for classification 7334, only journeyman Laborers and Painters earn less than the Stationary Engineers in journeyman classification 7334.

Applying the Charter standards, the Arbitration Board concluded that the City's LBFO on wages should be adopted. The Union's LBFO seeking two floating holidays during the first year

of the contract in addition to the wage increases offered by the City had never been reduced to writing and was formally raised by the Union for the first time in these proceedings, contrary to the requirements of the ground rules.

With respect to the issue of Acting Assignments, the Arbitration Board concluded the Union's LBFO should be adopted, notwithstanding the evidence that 10 of the 12 bargaining units containing employees similar to those in the Local 39 unit limited Acting Assignment Pay to those employees who performed the acting assignments for 10 consecutive days, one bargaining unit limited Acting Assignment Pay to employees who worked 10 consecutive days in a 60 day period, and one bargaining unit limited Acting Assignment Pay to employees who worked 10 consecutive days or 80 hours. The Board was concerned about the requirement in the City's offer that the Acting Assignment had to be in writing for the employee to get Acting Assignment Pay. A strict construction of such a requirement would preclude payment to employees who had been assigned verbally to perform work of a higher classification. The Board noted that there was no requirement that terms and conditions of employment be the same in all bargaining units and that it was appropriate for there to be differences between bargaining units. Union Business Representative Rojo testified he did not see many employees getting Acting Assignment Pay but did see a lot of grievances about employees not getting the pay. The City introduced evidence that 57 Local 39 employees of the Public Utilities Commission received 10 or more consecutive days of Acting Assignment Pay out of 81 employees who worked 10 or more days of Acting Assignment in fiscal year 2009-1010. That amounts to 70 percent of those who received Acting Assignment Pay would have received it under the City's proposal (57/81 = 70) and 30 percent would not. The Board concluded that a 30 percent reduction in the number of employees eligible to receive Acting Assignment Pay was substantial.

With respect to the issue of the Multiple License Premium, the Arbitration Board concluded the Union's LBFO should be adopted. As of April 30, 2012, 75 percent of Local 39-represented employees received the 7.5 percent Premium (465 out of 619 total employees). The Board took notice that all of the four premiums contained in the Local 1414 collective bargaining agreement

were paid on hours actually worked, and nine of the 13 premiums paid in the Crafts contract were paid on hours actually worked, two were paid on hours assigned, and one was paid for time the employee spent using the equipment. Nevertheless, the existing requirement that the Premium is required on all hours paid was a requirement proposed by the City when the Premium was adopted in 2006 and has been enforced by three arbitration awards and one settlement agreement. One arbitration award granted the Premium to some employees and denied it to others. The Board noted that it is possible for the parties to negotiate a change in the requirements for receipt of the Premium. However, the Board chose to maintain the requirement of payment of the Premium on all paid hours as the City had initially proposed when the Premium was adopted.

With respect to the issue to MTA Performance Incentives, the Board concluded the City's LBFO was appropriate. The Board noted that MTA has removed the Performance Incentives from other contracts and, most especially, that no one receives the Incentives.

Accordingly, for the reasons set forth above and based on the Arbitration Board's authority as set forth in Charter Section A8-409-4, the Board issues the following

AWARD

The Board makes the following selections:

Issue One: Wages

The City's offer

Issue Two: Acting Assignment

The Union's offer

Issue Three: Multiple License Premium

The Union's offer

Issue Four: MTA Performance Incentive

The City's offer

IT IS SO ORDERED

Date: May 14, 2012

Jerilou H. Cossack, Neutral Arbitrator

Date: May 12, 2012

Joan Bryant, Union Board Member

Date: May 14, 2012

Christina Fong, City Board Member
I dissent on issues #2 and #3

APPENDIX A

Health Care

Art III.F - Medically Single Employees (pars. 152-157)

- Element:[2]

  Employee Only: the City shall pay 90% of the cost of the premium by plan capped at the second highest cost plan (i.e., Blue Shield)

- Savings: Projected, citywide, annualized savings of $9.5 million pursuant reduced City savings on Blue Shield at the employee only and employee with one dependent level and increased City costs at the employee with two or more dependents.

- Dependent Care Index → Total Cost Index: City's contributions to employee health insurance to be based on total premium cost which conforms to most common practice of other agencies and is easier understood.

152. ~~For fiscal year 2011-12 and thereafter, f~~**F**or all employees enrolled in the City Plan in the medically-single/Employee-Only category, the City's contribution will be capped at an amount equivalent to the cost of the second-highest cost plan for medically single/ Employee-Only enrollees. Employees who elect to enroll in the City Plan in this category must pay the difference between the capped amount of the City Plan described above and the cost of the City Plan coverage in the medically single/Employee-Only category.

153. If an employee's work location reasonably requires him or her to reside in a county in which there is no City HMO available, then the City shall pay for medically single/Employee-Only coverage under the City Plan.

154. ~~Medically single employees shall continue to receive an in-lieu $210.00 monetary cash payment. Effective July 1, 2004 the in-lieu $210.00 monetary cash payment will be reduced to $190.00.~~ **Effective June 30, 2014 the in-lieu monetary cash payment in this paragraph shall be deleted.**

155. Employees with one or more dependents enrolled in the City's Health Service System are not eligible to receive the monetary cash payment.

[2] Medical Plans noted reflect those currently available and current costs, both of which are subject to change.

156. Employees who enroll one or more dependents into the Health Service System during the term of this agreement will not be eligible for the monetary cash payment once those dependents are enrolled.

157. Employees who during the term of this MOU no longer have dependents enrolled in the Health Service System will **not** be eligible for the monetary cash payment.

** Complete copy of document is located in

File No. 120579

MEMORANDUM OF UNDERSTANDING

By and Between

THE CITY AND COUNTY OF SAN FRANCISCO

And

THE INTERNATIONAL UNION OF OPERATING ENGINEERS
STATIONARY ENGINEERS, LOCAL 39

For Fiscal Years
JULY 1, 2012 - JUNE 30, 2014

TABLE OF CONTENTS

ARTICLE I -- REPRESENTATION 1
- **I.A. RECOGNITION 1**
- **I.B. INTENT 2**
- **I.C. NO STRIKE PROVISION 2**
- **I.D. OBJECTIVE OF THE CITY 2**
- **I.E. MANAGEMENT RIGHTS 3**
- **I.F. OFFICIAL REPRESENTATIVES AND STEWARDS 3**
  - Official Representatives 3
  - Stewards 4
- **I.G. GRIEVANCE PROCEDURE 5**
  - Time Limits 5
  - NON-DISCIPLINARY GRIEVANCES 5
  - Steps of the Procedure – 5
  - Selection of the Arbitrator 7
  - DISCIPLINE/DISCHARGE GRIEVANCES 7
  - Authority of the Arbitrator 8
  - Fees and Expenses of Arbitrator 8
  - Hearing Dates and Date of Award 8
- **I.H. UNION SECURITY 8**
  - Authorization for Deductions 8
  - Dues Deductions 9
  - Agency Shop Application 9
  - Agency Shop Fee 9
  - Religious Exemptions 10
  - Payroll Deductions 10
  - Revocation of the Agency Shop Fee 11
  - Re-Implementation 11
  - Financial Reporting 11
  - Indemnification 12

ARTICLE II - EMPLOYMENT CONDITIONS 13
- **II.A. NON DISCRIMINATION 13**
- **II.B. CERTIFICATION FEES 13**
- **II.C. PROBATIONARY PERIOD 14**
- **II.D. USE OF PRIVATE AUTOMOBILE ON CITY BUSINESS 14**
- **II.E. PERSONNEL FILES 14**
- **II.F. CLASSIFICATION/REORGANIZATION 15**
- **II.G. MEALS – SHERIFF'S DEPARTMENT ONLY 15**
- **II.H. SUBCONTRACTING 15**

ARTICLE III - PAY, HOURS AND BENEFITS 17
- **III.A. WAGES 17**
- **III.B. WORK SCHEDULES 17**