

File No. 100583

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date June 18, 2010

Board of Supervisors Meeting Date _____

Cmte Board

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OTHER

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Completed by: Alisa Somera Date June 11, 2010

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.

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

3 **Ordinance adopting and implementing the arbitration award establishing the**
4 **Memorandum of Understanding between the City and County of San Francisco and the**
5 **International Union of Operating Engineers Stationary Engineers, Local 39, to be**
6 **effective July 1, 2010, through June 30, 2012.**
7

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

9 Section 1. The Board of Supervisors hereby adopts and implements the arbitration
10 award establishing the Memorandum of Understanding between the City and County of San
11 Francisco and the International Union of Operating Engineers Stationary Engineers, Local 39,
12 to be effective July 1, 2010 through June 30, 2012.
13

14 The Memorandum of Understanding so implemented is on file in the office of the Board
15 of Supervisors in Board File No. 100583.
16

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

19 By: (See File For Signature)
20 ELIZABETH S. SALVESON
21 Chief Labor Attorney
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25

A MATTER IN ARBITRATION

| | | | |
|--------------------------------|---|----------------|-----------------------|
| In a Matter Between: |) | | |
| |) | | |
| CITY AND COUNTY OF |) | Grievance: | Terms and Conditions |
| SAN FRANCISCO, |) | | of a Renewed Contract |
| |) | | |
| (Employer) |) | | |
| |) | Hearing: | May 1, 2010 |
| and |) | | |
| |) | Award: | May 5, 2010 |
| THE INTERNATIONAL UNION OF |) | | |
| OPERATING ENGINEERS STATIONARY |) | McKay Case No. | 10-196 |
| ENGINEERS, LOCAL 39, |) | | |
| |) | | |
| (Union) |) | | |

DECISION AND AWARD

**GERALD R. McKAY, NEUTRAL ARBITRATOR
JOAN BRYANT, PANEL MEMBER
MARTIN GRAN, EMPLOYER PANEL MEMBER**

Representatives:

Employer: Gina M. Roccanova, Esq.
Stacey Lucas, Esq.
Deputy City Attorney
City and County of San Francisco
1390 Market Street, 5th Floor
San Francisco, CA 94102-5408

Union: W. Daniel Boone, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

A MATTER IN ARBITRATION

| | | | |
|--|---|----------------|---|
| In a Matter Between: |) | | |
| CITY AND COUNTY OF SAN FRANCISCO, |) | Grievance: | Terms and Conditions of a Renewed Contract |
| (Employer) |) | Hearing: | May 1, 2010 |
| and |) | Award: | May 5, 2010 |
| THE INTERNATIONAL UNION OF OPERATING ENGINEERS STATIONARY ENGINEERS, LOCAL 39, |) | McKay Case No. | 10-196 |
| (Union) |) | | |
| | | | |

STATEMENT OF PROCEDURE

This matter arises out of provisions in the City Charter provisions of the City and County of San Francisco. Pursuant to Section A8.409-4, when the City and one of its Unions reach an impasse with respect to the negotiation of terms and conditions for a new Collective Bargaining Agreement, they are required to submit their dispute to binding arbitration pursuant to the Charter provisions. In response to these obligations, the parties selected this Arbitrator to sit as the Neutral Arbitrator on a Panel of Arbitrators to hear and resolve the matter. Hearings were held in San Francisco, California on April 30 and May 1, 2010. During the first day of the proceedings, the parties attempted with the assistance of the Arbitrator, who was serving as a Mediator, to negotiate the terms of a new contract through mediation. Upon the completion of the day, mediation was not successful, and the matter was submitted to arbitration, which commenced the following day on May 1, 2010.

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 Offer, which the Arbitrator received prior to noon on May 3, 2010. Having had an opportunity to review the record, the following reflects the Panel's decision in a manner that is in accord with the requirements of the City Charter. By a majority of the vote, the Panel selected in its entirety either the Union's or the Employer's Last, Best and Final offer on an issue-by-issue basis.

ISSUE

Which position should be selected in order to resolve the impasses that exist between the Union and the Employer regarding the terms and conditions of a renewed Collective Bargaining Agreement?

RELEVANT CONTRACT LANGUAGE

A8.409-4

(d) In the event no agreement is reached prior to the conclusion of the arbitration hearings, the board shall direct each of the parties to submit, within such time limit as the board may establish, a last offer of settlement on each of the remaining issues in dispute. The board shall decide each issue by majority vote by selecting whichever last offer of settlement on the 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, including, but not limited to: changes in the average consumer price index for goods, 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 and 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.

BACKGROUND

The Union and the Employer have a current Collective Bargaining Agreement that went into effect on July 1, 2009 and terminated on June 30, 2010.¹ Prior to the expiration of the current Collective Bargaining Agreement, the parties negotiated over the terms and conditions of a new Agreement. The parties were able to reach a tentative agreement on a number of issues, and those issues are to be incorporated into the final Agreement along with the issues in dispute, which the Panel decides. The tentative agreements and the issues the Panel resolves are in turn to be incorporated into the existing Memorandum of Agreement in a manner consistent and compatible with that document.

At the time the parties agreed they were not likely to resolve the Collective Bargaining Agreement between themselves without the assistance of outside intervention, the Union had a package proposal on the table which it identified as Proposal #4 dated April 23, 2010. The Union's proposal lists the items, which the Union believed were necessary in order to reach the terms of a new agreement. The City had a package proposal on the table, which it referred to as Proposal #4 dated April 23, 2010.² These proposals reflected the positions the City believed were necessary for the City to agree mutually with the Union on a new Collective Bargaining Agreement. At the end of the arbitration hearing, the parties agreed that the issues that were still in dispute for which a last, best and final offer were required are the following: (1) a wage concession agreement; (2) a multiple license agreement; (3) a health care agreement relative to the Union's existing pay back provision in the Collective Bargaining Agreement extending \$190 per month to employees; (4) a health care modification which is part of the broader coalition of

¹ Employer Exhibit #17

Union agreement referred to as the "Comprehensive Agreement between the City and Public Employees Committee" dated April 20, 2010;³ and (5) the Union's provision called "Favored Nations."

Evidence was submitted about the financial condition of the City and County of San Francisco. The City estimated that it has a projected general fund shortfall of approximately \$482 million for fiscal year 2010-2011. As a result of the downturn in the economy, and the loss of revenue associated with that phenomena, the City has been forced to address ways of reducing its costs in a fashion that will bring its budget into balance. One of the efforts with respect to reducing costs was focused on an actual reduction in wages for employees working for the City and County of San Francisco. The Union in the present dispute does not disagree with the testimony and documents in the record with respect to the economic condition of the City. The issue in dispute relative to the demands that are presently on the table focus on the amount of reduction in wages and benefits that the City is attempting to impose on the Union relative to the reduction in wages and benefits, which other Unions suffered as a result of the City's economic problems. In general terms, it is the position of the Union that it should not be required to take any reduction in wages greater than those reductions that other employees were required to take.

In general terms, it is the position of the City and County of San Francisco that this Union has not had to take the reductions in wages and benefits that other Unions have taken over the last several years and, as a result, this Union will have to take a greater reduction in wages and benefits at the present time when some of the other Unions might have had to take as a result of the PEC Agreement. By way of example, Mr. Martin Gran, the Employer's Director of

² Employer Exhibit #16

Employee Relations, prepared a summary of concessions, which he asserted other Unions have experienced beginning as far back as the 2008-2009 fiscal year.⁴ By way of example, supervising nurses have suffered a 9.75% cut in wages over the past 3 years. During that same period of time, according to Mr. Gran, this Union has not had any cutbacks in wages or benefits. In its turn, the Union asserted that it is the only Union being asked to cut benefits other than those set forth in the PEC Agreement. In fact, the Employer's proposal on the table, according to the Union, requires it to suffer between a 6-½% and 7% wage and benefit cut while the City is not requiring any other Union to take more than a 3.75% to 4.62% cut in wages and benefits. That demand, the Union asserted, is inequitable and unfair.

LAST, BEST AND FINAL OFFERS OF THE PARTIES

EMPLOYER

City and County of San Francisco Final Offer

A.

Issue #1: Wages

1. City's Final Offer:

Except as set forth below, for the term of this agreement, employees covered by this agreement year shall have their wages temporarily reduced by the value of twelve (12) furlough days via smoothing through hourly reduction (4.62%) of base wage per year. Implementation of the reduction will be based on 0.25% pay increments, for an overall reduction of 4.62% for each fiscal year.

In the event the City's FY 2011-12 Joint Report, issued on or about March 30, 2011, projects the General Fund deficit in FY 2011-12 to be less than \$261 million, the parties agree to reduce the twelve (12) unpaid furlough days (or corresponding equivalent concessions) according to the following schedule:

(1) Deficit of \$150-\$261 million: to five (5) unpaid furlough days to be taken by employees in FY 2011-12.

³ Employer Exhibit #9

⁴ Employer Exhibit #9

(2) Deficit from \$100 up to \$150 million: to three (3) unpaid furlough days for FY 2011-12.

(3) Deficit less than \$100 million: to zero (0) unpaid furlough days.

All base wage calculations shall be rounded to the nearest salary schedule. All wages shall be restored to their original levels, (i.e., as if the concessions agreed to herein had not been made), on June 9, 2012.

Floating Holidays

Except as otherwise provided herein, effective July 1, 2010 for FY 2010-11, and July 1, 2011 for FY 2011-12, in recognition of the value of wage concessions during the year, employees subject to the 4.62% wage concession shall receive a one-time addition of twelve (12) floating holidays for each fiscal year. The 12 furlough days includes 5 Minimum Staffing Days, which must be taken by employees if directed to do so by departments. Employees in classifications 7375, 7372, 7373, and 7252, assigned to PUC Wastewater may be required to use their floating holidays during "t-weeks" provided for in Appendix A of the MOU. Except as otherwise provided above, floating holidays are to be scheduled per mutual agreement, based on operational needs of the department.

If the number of unpaid furlough days (or equivalent) for the year is reduced by operation of the provisions of the deficit triggers above, the number of additional floating holidays will be reduced in a corresponding manner.

Notwithstanding the paragraphs above, any unused floating holidays accrued from July 1, 2010 through June 30, 2012 may be carried over to be used in FY 2012-13, FY 2013-14 and FY 2014-15.

During FY 2010-11, FY 2011-12, FY 2012-13, FY 2013-14 and FY 2014-15, floating holidays must be used before vacation days or hours are taken; provided however that this limitation (i.e., use of floating holidays before vacation) will not apply in cases in which use of the floating holiday will cause a loss of vacation due to the accrual maximums.

Retirement Restoration

For employees who retire prior to July 1, 2013 and whose final compensation for retirement purposes is impacted by the wage reduction described above, the City will make available restoration pay in a lump sum equivalent to the pensionable value of the wage reduction or wage increase deferral described for the period used by the applicable retirement system to determine the employee's final compensation for retirement purposes (Final Compensation Period). For employees who retire prior to July 1, 2012, post-retirement payouts of vacation and vested sick leave will be made at the employee's normal (pre-reduction or non-wage-deferred) hourly rate, although nothing herein requires the San Francisco

Employees Retirement System, or any applicable retirement system, to include payouts of vacation or vested sick leave in retirement calculations.

Should employees who retire prior to July 1, 2013 wish to receive retirement restoration, they must, at least thirty (30) days prior to the last date of employment, agree to re-designate any floating holidays they have taken during the Final Compensation Period in excess of five (or four, depending on the contract) to vacation days upon retirement. This redesignation shall not apply to floating holidays carried over from a prior fiscal year. Once they have taken five (or four, depending on the contract) floating holidays during the Final Compensation Period, such employees will not be eligible to take any floating holidays during the last 30 days of their employment except for floating holidays accrued before July 1st of the fiscal year in question

Credit For Other Concessions

Should the Board find in the City's favor on either Issue #2 (Multiple License Premium), Issue #3 (Health Care/\$190 Cash Back Provision) or both, the Board shall credit those concessions toward the wage concession as follows:

If the Board finds in the City's favor on Issue #2, the wage concession amount shall be reduced by 1.5%. If the Board finds in the City's favor on Issue #3, the wage concession amount shall be reduced by 0.3%.

B. Issue #2: Multiple License Premium

1. City's Final Offer

The City's final offer of settlement on the Multiple License Premium is as follows:

Multiple License Requirement Premium (par. 121 & 122)

121. Effective July 1, ~~2010, 2009~~, a premium of ~~seven and one-half percent (7.5%)~~ five percent (5%) 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.

122. 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.

C. Issue #3: Elimination of the Cash Back Provision

1. City's Final Offer

The City's final offer of settlement on this issue is as follows:

III.F. HEALTH BENEFIT CONTRIBUTIONS

DEPENDENT HEALTH CARE

150. The City shall contribute the greater amount of up to \$225 per month or 75% of the dependent rate charged by the City to employees for Kaiser coverage at the dependent plus two level.

~~151. Medically single employees shall continue to receive an in lieu \$210.00 monetary cash payment. Effective July 1, 2004 the in lieu \$210 monetary cash payment will be reduced to \$190.~~

~~152. Employees with one or more dependents enrolled in the City's Health Service System are not eligible to receive the monetary cash payment.~~

~~153. 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.~~

~~154. Employees who during the term of this MOU no longer have dependents enrolled in the Health Service System will be eligible for the monetary cash payment.~~

D. Issue #4: Cap On City Plan Contributions

1. City's Final Offer

The City's last, best, and final proposal on this issue is:

(MOU paragraphs 150-155):

MEDICALLY SINGLE EMPLOYEES

For FY 2011-12 and thereafter, for 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 City Plan coverage in the Medically-Single/Employee-Only category.

If an employee's work location reasonably required 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.

E. Issue #5: Most Favored Nation

1. City's Final Offer

The City's last, best, and final proposal on this issue is: No change to the current MOU.

UNION

Union Last, Best and Final Offer

May 3, 2010

Issues in Agreement

- Tentative Agreement – Non-Discrimination March 19, 2010
- City Proposal #9 – Probationary Period March 5, 2010
- City Proposal #11 (Union Counter #1) - Lead Airport Pay March 5, 2010
- City Proposal #13B - Housekeeping April 23, 2010
- Union Proposal #1 (City Counter #1D) – Grievance April 23, 2010
- Union Proposal #16 (Union Counter #1) – Duration April 23, 2010

Issues in Dispute

Item #1 – City Proposal #12A – Wages

Union proposes the following:

Effective July 1, 2010 and ending on the last day of the pay period that ends on June 8, 2012, wages shall be temporarily reduced by 3.75%. All wages shall be restored to their original levels (i.e., as if the concession agreed to herein had not been made), on June 9, 2012.⁵

For fiscal years 2010-11 and 2011-12 only, employees who separate employment from the City shall have all of their entitled payouts (i.e., accrued but unused vacation, floating holidays,

⁵ Assuming one percent of payroll = \$682,403, then the cost of this concession to the bargaining unit equates to \$2,559,011 per year.

compensatory time, etc.) not reflect reductions in an employee's hourly rate that were implemented as part of this Agreement.⁶

In addition, the Union proposes to adopt the following provision of the Agreement between the City and County of San Francisco and the Public Employees Committee (April 20, 2010):

Section III – Retirement Restoration (Pages 9 – 10 of the April 2010 PEC Agreement, in evidence as City Exhibit 9, incorporated by reference).

Item #2A – City Proposal #14B – Health care

Item #2A refers to City proposal to eliminate \$190 monetary cash payment for medically single employees.

Union proposes to maintain the status quo, meaning no change in the language of the MOU.

Item #2B – City Proposal #14B – Health care

Item #2B refers to City proposal adopting language from the PEC capping the contribution for medically single employees enrolled in the City Plan effective FY 2011-12 (Section IV. 4 of the April 2010 PEC Agreement, in evidence as City Exhibit 9).

Union proposes to maintain the status quo, meaning no change in the language of the MOU.

Item #3 – City Proposal #16B – Multiple License Premium

Union proposes to maintain the status quo, meaning no change in the language as interpreted and applied by Arbitrator Gerald McKay in the 2009 Interest Arbitration Award.

Item #4 – Union Proposal #14 – Favored Nations Clause

Union maintains Proposal #14 which reads as follows:

During the term of this Agreement, in the event that the City enters into a contract with any other bargaining unit which provides for an across the board salary increase, enhancements to medical, vision, dental, life or disability plan, then Members of Local 39 shall receive the same percentage salary increase, and the same enhanced medical, vision, dental, life or disability plan.

⁶ This language is adopted from the Agreement between the City and the Public Employees Committee Section II.6 – Impact, page 9.

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

It is the requirement of the Panel to select the Last, Best and Final Offer of either the Union or the Employer 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 and costs of the decision of the arbitration board.

In addressing the issues that are before the Panel, some of these considerations are applicable and some are not. The health and safety of employees is really not at issue in any of the decisions the Panel is required to make. The economic condition of the City is at the heart of all the issues the Panel has to decide. There is no question that applying each and every one of the factors that have been cited above that the City has demonstrated unequivocally that it is in a severe economic situation. The City must do something, including cutting wages in order to

bring its deficient down to meet the requirement for a balanced budget contained in the City Charter. In this respect, the only real issue is how much wage and benefit cuts are necessary to equitably address the City's financial problems.

In an effort to address the financial concerns related to wages, hours and benefits, a number of the Unions in the City formed the Public Employee Committee (PEC) to negotiate jointly with the City regarding wages and benefits. As a result of that negotiation, an agreement was reached. One of the elements of the Agreement states, "It is the shared objective of the City and the PEC through this agreement that all City employees share as equally, to the extent possible, in the assistance to the City in closing the FY 2010-2011 and FY 2011-2012 projected budget deficits, saving City jobs and maintaining a central city services. The City will provide the PEC with a written report on the results of its efforts in this regard."⁷ In its Last, Best and Final Offer, the Union recognized its obligation to share the sacrifice with other employees in the City although this Union chose not to become part of the PEC Agreement. The question the Panel must address with respect to the Union's Last, Best and Final Offer is whether this proposal shares "as equally, to the extent possible, in the assistance to the City in closing the FY 2010-2011 and FY 2011-2012 projected budget deficits ..."

The PEC Agreement provides for floating holidays. Effective July 1, 2010 and in recognition of the value of wage concessions "Employees shall receive a one-time addition of twelve (12) floating holidays for one year ..." For purposes of the floating holidays, the City valued them at the rate of 4.62%. In other words, a floating holiday had an individual value in terms of wages of .38%. The employees agreed to take a 4.62% wage cut, but in return, the City

⁷ Employer Exhibit #9

gave them twelve paid floating holidays, which the City asserted had an equivalent value. However, the City's position with respect to the value of floating holidays has been internally inconsistent. A number of employees in positions which the City believes must be replaced if an employee is absent from that position have taken a 3.75% wage reduction and have not been given the twelve floating holidays. In this respect, if one is to assume that the City places any value on the twelve floating holidays, its true value instead of being 4.62% would really be .87%, or the difference between 3.75% and 4.62%. By this, the Panel means that if the City is required to replace an employee who takes a floating holiday, the City does not spend .38% to do so. The City has to spend more because the replacement, in all likelihood, would be done by someone who is paid overtime. Recognizing this reality, the City has determined that rather than giving employees whose jobs must be replaced twelve holidays, they have instead reduced the amount of wage reduction to 3.75% rather than 4.62% placing on that reduction what must be described as the City's true evaluation of the cost of the twelve floating holidays.

The PEC Agreement recognizes the fact that the 4.62% wage reduction is flexible and does not necessarily have to be imposed on all employees in all bargaining units depending on their individual circumstances. In Section 2.1(3) it states, "Nothing shall prevent the City and each Union from agreeing to alternative arrangement for concessions for employees in classifications with fixed post staffing who cannot be easily granted time off." For these individuals, which Mr. Gran estimated to be in the neighborhood of 300 to 400 people, they were given a 3.75% wage reduction, but not given twelve holidays. In the bargaining represented by the present Union, the parties estimated that approximately half of the positions are fixed positions that would require replacement if the employee was absent. In other words, if an individual working in the Sewer Department took a floating holiday, he would have to be

replaced so that the sewer eservice would continue to be available to the residents of San Francisco on a 24-hour basis. For the other half, presumably their position would not have to be replaced if they were to take a floating holiday. The Union's proposal of a 3.75% wage reduction actually saves the City additional money over and above the general PEC Agreement with other Unions at the 4.62% level with twelve floating holidays. The City would reduce the wages of the present Union by 3.75%. For at least half the unit that would have to be replaced, the City would not have to extend to them twelve holidays. By not having to extend twelve holidays, it would reduce its overtime costs in a manner that would actually constitute an amount larger than 3.75% in wage reduction. The members of the present Union work significant amounts of overtime, but if they were allowed twelve additional holidays that amount would be increased significantly. By not having to extend the holiday to these individuals, the City thereby reduces its overtime costs in an amount that actually saves the City more money, in all likelihood, than the .87% difference between 3.75% and 4.62%.

Even though there is a PEC Agreement, the Employer conceded that it has negotiated different packages with different Unions. By way of example, the Service Employees International Union negotiated a package with the City that called for a decrease in wages greater than 4.62%. The reason for this was to buy back position that the City would otherwise have laid off. The SEIU gave up twelve floating holiday in exchange for about 75 positions to avoid layoffs. The SEIU chose to save jobs by reducing wages and benefits more. On the other hand, certain craft unions chose not to accept paid holiday and, instead, took twelve furlough days in exchange for a different wage reduction package. There is a provision for "corresponding reductions in pay applied when the days are taken off." There is nothing in the PEC Agreement that would prohibit one union or another union from negotiating different terms so long as the

result achieves the goal of sharing “as equally, to the extent possible ...” in the overall reduction of costs for the City. In general terms, the agreed overall cost reductions are 4.62% or its equivalent in light of the other provisions of the PEC Agreement, which specifically means the twelve paid holidays that are being added.

The City argued, during the course of the arbitration, that the twelve paid holidays that are provided to employees in exchange for the 4.62% wage reduction really have no value. When employees choose to take the holidays pursuant to the provisions in the PEC, the City suggested, the City does not suffer any actual loss. In other words, for the City to pay workers to stay home and not do the business of the City, it has no cost to the City. On its face, this argument does not reflect sound financial reasoning. If there is no cost to an employer to have employees stay home and get paid for it, one must wonder why more employers do not pay employees to stay home. In reality, when that employee who is being paid stays home, the productivity of that employee on behalf of the employer is gone. One assumes that employees are paid for the work that they perform, not for staying home. If the City does not need them to perform the work, then the City should not pay them. For the City to pay them to stay home must result in some cost to the City. If the City truly wanted to have a 4.62% wage cut, it should not have offered in exchange twelve paid holidays. One alternative would have been to require twelve unpaid furlough days instead of a 4.62% wage cut. It is not economically feasible to have it both ways. One does not offer a wage reduction of 4.62% and then give twelve paid holidays, and achieve a real and meaningful 4.62% wage cut.

The City achieved the result of a 4.62% in wage cut by adding twelve holidays which in effect was a political accommodation to bring about an acceptable result with the majority of the

Unions. The Panel must assume that the City understands that it did not truly achieve a 4.62% wage cut across the board. What the City achieved was a wage cut of 4.62% reduced by the value of twelve paid holidays. The value of those paid holidays is difficult to determine because it does not, based on the City's conduct, have a value of 4.62%. It has a value that equals around .87% and certainly no more than 1%. In this respect, instead of taking twelve paid holidays, if an employee chose to take a lower wage cut, the employee would be sharing equally in the reduction necessary just as every other employee is sharing. It simply depends on which manner of sharing a particular employee or union chooses or prefers. In the present case, the Union has chosen to take a 3.75% wage cut across the board and not take twelve paid holidays. This is the equivalent, based on the City's own figures and the City's negotiating position with respect to at least 300 other employees to a 4.62% wage cut with twelve paid holidays.

The other issues involved in the present negotiations focused primarily on the City's desire to have the Union give back the benefit that it received in the multiple license provision of its Collective Bargaining Agreement, and to give back the health care payout each month of \$190. With respect to the \$190 health care payout, the parties suggested during the course of the proceedings that this amount probably ended up in the contract as a hidden form of wage increase at a time when a wage increase in some other form was not possible. In other words, employees in this bargaining unit received \$190 a month to help defray the costs of health care because the City was not in a position to put that \$190 on their wages at the time the amount was negotiated. Whether this is true or not, it does form a part of the compensation package that members of this bargaining unit receives and have been enjoying for a number of years. The City now wishes to take this back. The value of the health care payout is in the neighborhood of \$280,000 on an annualized basis, or approximately .35% of the wage package value.

The multiple license issue has been a controversial issue for a number of years. The City proposed in 2006 a new formulation for multiple licenses. The result of the formulation in combination with an Arbitrator decision is that it increased the costs to the City significantly to the benefit of employees who obtained multiple certifications or licenses. The City contended that during the past five years, the amount has increased over 7,000%. It costs the City approximately 3% of wages on an annualized basis to pay this amount to various members of the bargaining unit. The City's position is that this amount should not be paid, is unfair, and should be reduced. The proposal of the City amounts to a virtual takeaway reducing the overall value of this benefit by approximately 1.5%. When this amount is combined with the \$190 health care takeaway, the City is asking the employees in this bargaining unit to take approximately a 2% additional wage and benefit reduction over and above those demanded of other bargaining units. The City's justification for doing so is that this bargaining unit has not suffered wage and benefit reductions in the past, as have other Unions.

The problem with looking at historical changes relative to other bargaining units is that it is virtually impossible to compare two bargaining units in the City of San Francisco and achieve an apple-to-apple comparison. There are so many variables and so many types of employees that it is hard to know whether an alleged concession by one particular Union is equivalent to an alleged no concession by another Unions. There may be variables that have put the Union making the concession much further ahead than the Union that is not making the concession. To establish equivalency would require days and days, if not months, of litigation to compare each contract, each benefit, and each reduction in a manner that would put them on the same footing. The City did not do that in this case. It simply took the raw data showing that other employees

over the last two or three years have had wage and benefit reductions, and then accumulated those to make the claim that the present Union suffered no wage and benefit reductions.

The City's efforts are not supported by the preponderance of the evidence or by competent evidence. They simply reflect an opinion based on anecdotal information which may or may not be true if subjected to an appropriate analysis. Furthermore, historical comparisons almost never have any present value. The members of the present Union claim that they should be paid an amount equivalent to other craft unions, which would be \$10 or \$15 per hour more than they are presently paid. The members of this Union have never been paid that and are likely never to be paid that. Should one consider this difference in pay to be a concession, this Union has made much greater concessions over time which would entitle them not to a wage cut, but to a wage increase. The answer to that is no. What happened historically is what happened. It cannot be changed and the reasons for its existence are based on variables that existed at the time that it occurred. The only relevant consideration is what is happening at the present time with the Unions and their present circumstances.

It is unfair and is not consistent with the PEC Agreement to force this Union to take cuts that are significantly greater than cuts being imposed on other Unions. For the Employer to require this Union to give up its multiple license provisions or its \$190 hospital provision is not consistent with shared pain. It is consistent with the City's desire to get these two issues back from the present Union, but it is not consistent with the general overall desire to have all employees share equally in the City's financial problem. The members of this Union should not have to take a cut larger than 4.62% or its equivalent. If the wages of the members of this Collective Bargaining Agreement are cut 3.75% without receiving any paid holiday that is the equivalent of 4.62% and the employees should not have to suffer any further reductions. It is not

equitable and it is not consistent with what the City negotiated with the other Unions in the PEC Agreement.

AWARD

The Panel makes the following selections:

Issue One - Wages:

The Union's offer;

Issue Two - Multiple licenses:

The Union's offer;

Issue Three - the cash back provision:

The Union's offer;

Issue Four - cap on health cost:

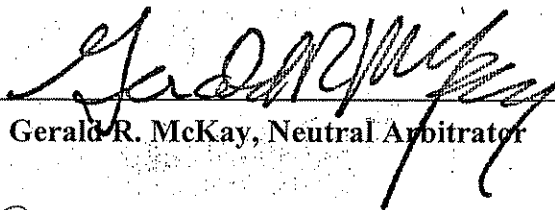
The Employer's offer; and

Issue Five - Favorite Nation:

The Employer's offer.

IT IS SO ORDERED.

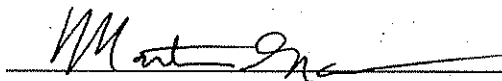
Date: May 5, 2010


Gerald R. McKay, Neutral Arbitrator

Date: May 6, 2010


Joan Bryant, Union Panel Member

Date: May 7, 2010


Martin R. Gran, Employer Panel Member
DISSENT

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, 2010 - JUNE 30, 2012**