

**IN INTEREST ARBITRATION PROCEEDINGS  
PURSUANT TO CHARTER SECTIONS A8.409**

International Brotherhood of Electrical /  
Workers, Local 6 /

Union /

OPINION AND AWARD

and /

The City and County of /  
San Francisco /

Employer /

\_\_\_\_\_ /

**Arbitration Board Members**

Christopher Burdick:	Neutral Chairperson
Carol Isen:	City Board Member
Kevin Hughes:	Union Board Member

**Appearances**

**On Behalf of The Union:**

Peter W. Saltzman, Esq.  
Leonard Carder, LLP,  
1188 Franklin Street,  
San Francisco, CA, 94109

**On Behalf of the Employer**

Erik A. Rapoport, Esq.  
Deputy City Attorney,  
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## INTRODUCTION

In 2012, the parties negotiated a Collective Bargaining Agreement for the two-year period from July 1, 2012 through June 30, 2014 (CBA). In the course of the 2012 collective bargaining negotiations, the City represented that North American Electric Reliability Commission (NERC) certification standards may require changes to the work at Hetch-Hetchy Moccasin Powerhouse and Early Intake powerhouses. The parties agreed that, should they fail to reach agreement on the issues noted above, any issues which remained unresolved after good faith bargaining would be submitted to a mediation/arbitration board in, accordance with the procedures and criteria set forth in City Charter Section A8.409-4, with Arbitrator Christopher Burdick serving as the neutral Chairperson.

After the CBA was signed, the parties began meeting and conferring regarding the Moccasin and Early Intake powerhouses work days, work weeks, scheduling cycles, rotations, training, travel pay and transportation costs, and any other matters required for NERC compliance at the powerhouses. The parties were not successful in resolving their differences, and impasse was declared in May 2013

The impasse was then set for interest arbitration hearings on November 6-7, 2013, under City Charter section A8.409-4, with Christopher Burdick, arbitrator/mediator, acting as the neutral Chairperson of the Arbitration Board (Board). The City selected Carol Isen, Negotiator for the City's Department of Human Resources (DHR), as its Board Member; the International Brotherhood of Electrical Workers, Local 6 (Local 6 or The Union) selected Kevin Hughes, Business Representative, as its Board Member.

The City was represented by Erik A. Rapoport, Esq., Deputy City Attorney. The Union was represented by Peter W. Saltzman, Esq., of Leonard Carder, LLP.

## **ARBITRATION AWARD**

Under the Charter, unresolved differences in negotiations between the City and a recognized employee organization which persist to the point of impasse are submitted to final and binding interest arbitration, to be heard and decided by a three-member Arbitration Board (Board). The City appoints one member, the union appoints one member, and those two members then select a third, neutral person to chair the Board. Charter Section A8.409-4(c) describes the process the Board may follow to reach an agreement between the parties:

The Board may hold public hearings, receive evidence from the parties and cause a transcript of the proceedings to be prepared. The Board, in the exercise of its discretion, may meet privately with the parties to mediate/arbitrate the dispute. The Board may also adopt other procedures designed to encourage an agreement between the parties, expedite the arbitration hearing process, or reduce the costs of the arbitration process.

On October 3, 2013, the parties met at Moccasin, California, to discuss the issues and evidence related to the City's operation of its high voltage work force at the Moccasin and Early Intake powerhouses. The Board Chairperson, Christopher Burdick, closely queried the advocates and fellow board members; spoke directly with representatives from both the City and Local 6; and reviewed documents submitted by the City and the Union. The parties stipulated that the evidence and testimony reviewed on October 3 would form the basis of this Stipulated Award without having to formally put the evidence and testimony on the record before a court reporter.

At the end of the October 3, 2013 proceedings, the City and the Union submitted their last best and final offers on the issues set forth below. The Board, in the exercise of its discretion, asked the neutral Chairperson to make recommendations to the parties on each of the issues still in dispute. Adopting this procedure, the parties eventually stipulated that Appendix B.II.F.3(b) and B.II.J.6 be amended, and a that new paragraph, Appendix B.II.D.10, be added into the CBA as set forth below.

**Appendix B.II.D.10**

**10. Powerhouse Operators on the Moccasin Schedule I Cycle are eligible for overtime, at one-and-one-half times their regular rate of pay, after they have worked more than forty (40) hours in a normal work week, or more than 12 hours in one day. Powerhouse Operators on the Moccasin Schedule II Cycle are eligible for overtime, at one-and-one-half times their regular rate of pay, after they have worked more than forty (40) hours in a normal work week, or more than 10 hours in one day. Powerhouse Operators assigned to work at the Early Intake powerhouses on the Schedule III Cycle are eligible for overtime, at one-and-one-half times their regular rate of pay, after they have worked more than forty (40) hours in a normal work week, or more than 8 hours in one day.**

**Appendix B.II.F.3(b)**

(b.) Hetch Hetchy Water and Power; Moccasin Powerhouse, **which includes the Control Room,** and Early Intake **powerhouses**

**Appendix B.II.J.6**

(6) Moccasin Power-Hhouse, **which includes the Control Room,** and Early Intake **powerhouses**: Overtime offered by Ppowerhouse, by Ppowerhouse seniority in accordance with seniority lists established as of each January 1. Once through the list, then assignments are offered to employee with least number of "accrued overtime hours." Refusals count as "accrued overtime hours" for the purpose of overtime distribution..

**STIPULATED AWARD – PART ONE**

The Board approves the stipulated provisions set forth above, and directs the inclusion of this language into the CBA.

Christopher Burdick:	I concur
Carol Isen:	I concur
Kevin Hughes:	I concur

**CONTESTED ISSUES – AWARD PART TWO**

In addition to the stipulated provisions set forth above, four (4) matters were submitted to the Board for final and binding arbitral resolution. They are described more fully hereinafter, but may be referred to, for the purposes of this Award, as follows:

1. Moccasin Powerhouse Operators Schedule;
2. Early Intake Powerhouse Operators Schedule;
3. Early Intake Powerhouse Staffing; and
4. North American Electric Reliability Corporation (NERC) Training.

**LAST, BEST, AND FINAL OFFERS/DEMANDS OF THE PARTIES**

The last, best, and final offers (“LBFO”) of the parties on the four disputed issues (described more fully hereinafter) are set forth below.

**1. Moccasin Powerhouse Operators Schedule.**

The City’s last best and final offer regarding the Moccasin Powerhouse Operators schedule was to amend Appendix B.I.C, and delete Appendix B.II.I.3, as set forth below. The Union’s last best and final offer was to make no change to the CBA.

## Appendix B.I.C

### I. WORKWEEK AND HOURS

C. Hetch-Hetchy Moccasin Powerhouse and Early Intake Powerhouses – Powerhouse Operators (classes 7480, 7482, 7484 and 7488)

1. Moccasin Powerhouse Operators

The normal work week and hours for unit employees assigned to Moccasin Powerhouse shall be in accordance with the following two cycles:

Moccasin Powerhouse Schedule I Cycle: A thirty-five (35) ~~twenty-eight~~ day cycle of:

- ~~1. 4 consecutive 12 hour day shifts and one (1) four hour day shift, then 6 days off;~~
- ~~2. 4 consecutive 12 hour night shifts, then two (2) days off;~~
- ~~3. 3 consecutive 12 hour day shifts, then one (1) day off;~~
- ~~4. 3 consecutive 12 hour day shifts, then two (2) days off.~~

a. Three (3) consecutive day shifts of 12 hours followed by seven (7) consecutive days off.

b. Four (4) consecutive day shifts of 11 hours followed by three (3) consecutive days off.

c. Four (4) consecutive night shifts of 12 hours followed by two (2) consecutive days off.

d. Three (3) consecutive day shifts of 12 hours followed by one (1) day off.

e. Three (3) consecutive night shifts of 12 hours followed by two (2) consecutive days off.

f. One day shift of 12 hours.

All 11- and 12-hour day shifts begin at 6 a.m. All 12-hour night shifts begin at 6 p.m.

~~There shall be one class 7484 (Sr. Power Gen. Tech.) administrative shift at Moccasin Powerhouse which shall be scheduled on a “4/10” basis. Assignment will be for an eight (8) month duration.~~

Moccasin Powerhouse Schedule II Cycle: Four (4) consecutive 10-hour day shifts within one week.

Newly hired employees shall be placed on the Moccasin Powerhouse Schedule II Cycle for up to eighteen (18) months, or a shorter period of time, subject to the operational needs of the Department, and thereafter shall be assigned to either the Early Intake powerhouses on the Schedule III Cycle, or the Moccasin Powerhouse on the Schedule I Cycle. The 10-hour Moccasin Powerhouse Schedule II day shifts shall begin at 6 a.m.

### Appendix B Section II.I.3

~~3. Hetch-Hetchy – Moccasin Power House and Early Intake: New hires are assigned work shifts at management's discretion for 120 days. Thereafter employees are subject to shift cycle rotation.~~

#### **2. Early Intake Powerhouse Operators Schedule.**

The City's last best and final offer regarding the Early Intake Powerhouse Operators schedule was to amend Appendix B.I.C.2 as set forth below. The Union's last best and final offer was to make no change to the CBA.

### Appendix B.I.C.2

#### **2. Early Intake powerhouses – Schedule III Cycle:**

The Early Intake schedule consists of ~~a series of six 40-hour work weeks,~~ consisting of **a Monday through Friday** work weeks containing ~~either four (4) 10-hour days or five (5) consecutive 8-hour days~~ **day shifts** as follows: **Early Intake 8-hour day shifts shall begin at 7 a.m.**

- ~~1. — 3 consecutive days off.~~
- ~~2. — 4 consecutive 10-hour days on.~~
- ~~3. — 3 consecutive 8-hour days on.~~
- ~~4. — 2 consecutive days off.~~
- ~~5. — 7 consecutive 8-hour days on.~~
- ~~6. — 5 consecutive days off.~~

- 7. — 4 consecutive 10 hour days on.
- 8. — 3 consecutive 8 hour days on.
- 9. — 2 consecutive days off.
- 10. — 7 consecutive 8 hour days on.
- 11. — 2 days off.

**3. Early Intake Powerhouse Staffing.**

The City’s last best and final offer regarding the Early Intake Staffing was to amend Appendix B.II.D.7 and add a new paragraph B.II.D.9 as set forth below. The Union’s last best and final offer was to make no change to the CBA.

**Appendix B.II.D.7**

7. The eCity acknowledges for Hhealth and Ssafety reasons, PUC staffs the Moccasin Power-Hhouse, which includes the and Early Intake Division's powerhouse eControl rRoom, with three (3) employees, however, on occasion, subject to the operational needs of the department, the crew size may be less than this number.

**B.II.D.9**

**9. If the City assigns any Powerhouse Operators to work at Early Intake, it shall assign at least two (2) Powerhouse Operators to work there on five (5) consecutive 8-hour day shifts, Monday through Friday, as set forth in Section C.2 above, however, on occasion, and subject to the operational needs of the Department, the City may staff Early Intake with one (1) Powerhouse Operator for a period not to exceed five (5) consecutive weekdays. No Powerhouse Operator shall be assigned to work alone at Early Intake on a Saturday or a Sunday without another City employee present.**



**4. North American Electric Reliability Corporation (NERC)**

**Training.**

The Union's last best and final offer regarding North American Electric Reliability Corporation (NERC) training was to amend Appendix B.II.D by adding a new paragraph 8 as set forth below. The City's last best and final offer was to make no changes to the CBA.

**Appendix B.II.D.8**

**8. Powerhouse Operators on the Moccasin Schedule I Cycle shall be assigned at least one hundred (100) hours of North American Electric Reliability Corporation (NERC) training per year, with such training to take place during the 11-hour day shifts. Powerhouse Operators on the Moccasin Schedule I Cycle may be assigned NERC training during other shifts in addition to the one hundred (100) hours of NERC training assigned during the 11-hour day shifts.**

**RELEVANT CHARTER PROVISIONS**

Under the City Charter, unresolved differences in negotiations between the City and a recognized employee organization which result in impasse are submitted to a final and binding mediation-arbitration procedure, to be heard and decided by a three-member arbitration board. The City appoints one member thereto, the Union appoints its member, and those two members select a third, neutral person to chair the board.

Charter Section A8.409-4(d) requires the Board to decide each issue in dispute 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, including, 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."

**AWARD – PART TWO**

**1. Moccasin Powerhouse Operators Schedule** - Based on the preponderance of the evidence presented by the parties, and the relevant criteria of Charter section A8.409-4(d), the City's proposal regarding the Moccasin Powerhouse Operators schedule is accepted and the Union's proposal is rejected. The Board finds that the City's proposed Moccasin schedule does not significantly alter the wages, hours, benefits and terms and conditions of employment for powerhouse operators, and thus the Charter section A8.409-4(d) factors are not applicable. The evidence presented during the October 3, 2013 proceedings shows that there will be a slight reduction in annual scheduled overtime under the City's proposed Moccasin schedule, and thus the new schedule is more desirable than the current schedule.

Christopher Burdick:	I concur
Carol Isen:	I concur
Kevin Hughes:	I dissent

**2. Early Intake Powerhouse Operators Schedule** - Based on the preponderance of the evidence presented by the parties and the relevant criteria of Charter section A8.409-4(d), the City's proposal regarding the Early Intake Powerhouse Operators schedule is accepted and the Union's proposal is rejected. The Board finds that the City's proposed Early Intake schedule does not significantly alter the wages, hours, benefits and terms and conditions of employment for powerhouse operators, and thus the Charter section A8.409-4(d) factors are not applicable. The evidence presented during the October 3, 2013 proceedings shows that there will be no impact on scheduled overtime at Early Intake under the City's proposed Early Intake schedule, and thus the new schedule is more desirable than the current schedule.

Christopher Burdick:	I concur
Carol Isen:	I concur
Kevin Hughes:	I dissent

**3. Early Intake Powerhouse Staffing** - Based on the preponderance of the evidence presented by the parties and the relevant criteria of Charter section A8.409-4(d), the City's proposal regarding Early Intake staffing is accepted and the Union's proposal is rejected. The Board finds that the City's proposal regarding Early Intake staffing does not significantly alter the wages, hours, benefits and terms and conditions of employment for powerhouse operators, and thus the Charter section A8.409-4(d) factors are not applicable. The evidence presented during the October 3, 2013 proceedings shows that the City's proposed changes to Early Intake staffing should reduce the need for unscheduled overtime at the Early Intake powerhouses, and thus the proposed changes are more desirable than the current staffing requirements.

Christopher Burdick:	I concur
Carol Isen:	I concur
Kevin Hughes:	I dissent

**4. North American Electric Reliability Corporation (NERC) Training -**

Based on the preponderance of the evidence presented by the parties and the relevant criteria of Charter section A8.409-4(d), the Union’s proposal regarding North American Electric Reliability Corporation (NERC) training is accepted and the City’s proposal is rejected. The Board finds that the Union’s proposal regarding NERC training does not significantly alter the wages, hours, benefits and terms and conditions of employment for powerhouse operators, and thus the Charter section A8.409-4(d) factors are not applicable, with the one exception that NERC training should contribute to the improved health and safety of Powerhouse Operators at Hetch Hetchy. Adding a one hundred (100) hour NERC training requirement during normal business hours will promote the goal that each Powerhouse Operator comply with federally mandated NERC requirements.

Christopher Burdick:	I concur
Carol Isen:	I dissent
Kevin Hughes:	I concur

\_\_\_\_\_  
Christopher Burdick

Date: \_\_\_\_\_

\_\_\_\_\_  
Carol Isen

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin Hughes

Date: \_\_\_\_\_