

MATTHEW GOLDBERG  
 Arbitrator ♦ Mediator ♦ Attorney at Law  
 Oakland, California 94611

IN INTEREST ARBITRATION PROCEEDINGS PURSUANT TO  
 THE SAN FRANCISCO CITY CHARTER

In the Matter of a Controversy between:	)	
	)	
DISTRICT ATTORNEY INVESTIGATORS’ ASSOCIATION,	)	AWARD OF THE ARBITRATION BOARD
Union,	)	
	)	
and	)	
	)	
THE CITY AND COUNTY OF SAN FRANCISCO,	)	
Employer.	)	
	)	

This arbitration arises pursuant to the impasse resolution procedures of the San Francisco City Charter. Impasse was reached in negotiations for a successor to the 2022-2024 Collective Bargaining Agreement between the **DISTRICT ATTORNEYS INVESTIGATOR’S ASSOCIATION** (“Association” or “Union” below) with the **CITY AND COUNTY OF SAN FRANCISCO** (“City” or “Employer” below).

**MATTHEW GOLDBERG** was selected to serve as Neutral Member of the Mediation/Arbitration Board (“Board”). **ROCKNE LUCIA** of Rains, Lucia, Stern served as Union panel member while **ANDREA MORELAND**, Chief Investigator for San Francisco District Attorney's Office, served as the City’s Board Member.

Formal mediation sessions took place on May 1 and 2, 2024, and resulted in resolution of all issues save one, “POST and/or Education Premium Pay,” contained in Contract Section III.S, paragraph 179. That issue was the subject of a formal arbitration hearing conducted on

May 3. All parties had full opportunity to examine and cross-examine witnesses, and to submit evidence and argument, which was done primarily by Power Point presentations. Oral closing statements followed.

**APPEARANCES:**

On behalf of the Union:

**PETER HOFFMAN**, Esq., of **RAINS LUCIA STERN ET AL., PC.**, 2300 Contra Costa Blvd, Suite 500, Pleasant Hill, CA 94523-3973

On behalf of the Employer:

**ARTHUR A. HARTINGER**, Esq., of **RENNE PUBLIC LAW GROUP LLP**, 350 Sansome Street, Floor 3, San Francisco, CA 94104-1307

**RELEVANT PORTIONS OF THE CITY CHARTER**

**A8.409-4 IMPASSE RESOLUTION PROCEDURES**

(a) Subject to Section A8.409-4(g), disputes pertaining to wages, hours, benefits or other terms and conditions of employment which remain unresolved after good faith bargaining between the City and County of San Francisco, on behalf of its departments, boards and commissions, and a recognized employee organization representing classifications of employees covered under this part shall be submitted to a three-member Mediation/Arbitration Board (“the Board”) upon declaration of impasse either by the authorized representative of City and County of San Francisco or by the authorized representative of the recognized employee organization involved in the dispute. . . .

(c) Any proceeding convened pursuant to this Section shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure. The Board may hold public hearings, receive evidence from the parties and, at the request of either party, 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 or 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 cost of the arbitration process.

(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 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.

### **THE ISSUE**

As indicated, this controversy focuses on the amount of the increase to the premium which should be paid to eligible employees pursuant to Contract Article III. S, 179.

The Union proposed that the premium be raised from the former 6.5% to 7.5% of the employee's base rate of pay. The City proposed that the increase should be from 6.5% to 6.84%.

Those eligible to receive the premium included unit members in the 8146 (District Attorney Investigator), 8147 (Senior District Attorney Investigator), and 8149 (Assistant Chief District Attorney Investigator) classifications and any other DA Investigator with peace officer status who was accreted to this bargaining unit hired before July 1, 1990 or possesses a valid Advanced POST Certificate.

### **DISCUSSION**

In support of its proposal, the Association points to the fact that this unit comprises such a small portion of the City's work force (36 FTE's with 33 active, or 1%) that the financial impact of its proposal would be negligible. As its members are sworn peace officers, the Association compares its wages, benefits, etc. to other members who are peace officers employed by the City, namely police and deputy sheriffs. Police receive 8% for advanced POST pay, while deputy sheriffs were paid 7%.<sup>1</sup> For external comparisons, the Association relies on the

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<sup>1</sup>In the current round of negotiations, the City agreed to increase advanced POST pay for Deputy Sheriffs to 7.5%.

employees performing similar services in jurisdictions named in the Charter (Alameda, Contra Costa, Marin, San Mateo, and Santa Clara Counties) regarding pay for elected officials, including the District Attorney. Unit members are below market, as defined by these counties, both in wage and total compensation. Even including the four additional jurisdictions that the City uses as benchmarks (Solano, Napa, Sonoma and Santa Cruz Counties), the bargaining unit is still behind comparable employees in total compensation.

The City countered that the members of the unit primarily perform trial support work, and thus their jobs are much different than the peace officers who do patrol work like police officers or custodial work like the deputy sheriffs. The vast majority of unit members are receiving the advanced POST premium. They are a well-compensated group which enjoys a panoply of benefits in addition to a high salary. The City is unique in that it has its own retirement agency which allows retirees from one jurisdiction to receive their CALPERS retirement benefits while being employed by the City. 13 members of the unit are able to take advantage of this arrangement. Moreover, equity comparisons with the City's other peace officer groups are not appropriate because while these groups have serious recruitment and retention issues, such problems do not exist in this unit, which has no difficulty attracting and retaining new hires.

For external compensation comparisons among non-elected employees over the past twenty years, the City has used a broader metropolitan statistical area from the Bureau of Labor statistics comprised of nine Bay Area counties. These are the areas where the employees the City competes for live and work. This unit's salaries are 1.62% above that market. Insofar as advanced POST pay is concerned, the unit is 1.13% above it. As regards internal comparisons, certain peace officers in the City, such as the sergeants in the Sheriff's Office, also receive a 6.5% or lower advanced POST premium.

The City is committed to achieving parity City-wide among its employment groups for

increases in compensation. The number which has been agreed upon among these groups is 13.25% over three years. The City has made it clear that this was the maximum it could provide, with 13% allocated to salary and an additional .25% to be used for certain unique compensation components within each bargaining group. The small size of this unit does not warrant a modification to the City's consistent compensation policy. Moreover, the compensation increases which the City has offered have outpaced inflation and the CPI.

**AWARD**

It is determined that the City's proposal for Article III.S paragraph 179 most nearly conforms to those factors traditionally taken into consideration per Charter Section A8.409-4(d) in the determination of wages, hours, benefits and terms and conditions of public and private employment.

The City's proposal on this issue is accordingly adopted.

Dated: May 9, 2024

Dated:

DocuSigned by:  
*Matthew Goldberg*  
s/ \_\_\_\_\_  
MATTHEW GOLDBERG  
Neutral Board Member

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*Rockne Lucia*  
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ROCKNE LUCIA  
Association Board Member  
 Concur  Dissent

Dated: 5/13/2024

Dated: 5/13/2024

DocuSigned by:  
*Andrea Moreland*  
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ANDREA MORELAND  
City Board Member  
 Concur  Dissent

5/13/2024