

BARRY WINOGRAD
Arbitrator & Mediator
1999 Harrison Street, Suite 1400
Oakland, CA 94612
(510) 465-5000

May 9, 2019

Arthur Hartinger
Renne Public Law Group
350 Sansome Street, Suite 300
San Francisco, CA 94104

James Lassart
Murphy Pearson et al
88 Kearny Street, 10th Floor
San Francisco, CA 94108

Re: City and County of San Francisco, and Municipal Attorneys
Association
(City Charter Bargaining Impasse Decision and Award)
Arbitrator's File No. 18-197-MA

Dear Counsel:

This letter provides the arbitration board's decision and award regarding two issues that were not resolved by settlement in the course of a mediation-arbitration proceeding conducted on May 6-8, 2019. The proceeding took place pursuant to City Charter Section A8-409, et. seq., in order to arrive at a successor Memorandum of Understanding (MOU). For this proceeding, I was selected to serve as the neutral chairperson of an arbitration board to resolve an impasse in bargaining between the parties.

During the proceeding, the parties were afforded an opportunity to present evidence on May 6, 2019. A transcribed record of the session was prepared for that day. On May 7 and 8, the parties participated in mediation, arriving at the resolution of a substantial number of issues and confirming tentative agreements reached previously in bargaining. The parties are separately

submitting the settled issues for adoption as part of the City Charter procedure.

The two remaining issues to be resolved by the arbitration board concern (1) wages for a three year contract term, and (2) a general release for receipt severance payments.

On the issue of wages, which is the subject of Paragraph 87 of the MOU, the MAA proposes a total wage increase of 20 percent spread over a three year term. In contrast, the City proposes a wage increase of 11 percent over a three year term. The MAA argues that this increase is justified when comparing the wages of unit employees with other attorneys working in four major Bay Area counties (Alameda, Contra Costa, San Mateo and Santa Clara) and two cities (Oakland and San Jose). In contrast, the City proposes a comparison to wages for attorneys working in a larger geographical area of cities and counties that extends beyond the inner Bay Area, including several smaller counties and cities of modest size. For the City, this combined statistical area is one that has been relied upon in the past, for this unit and for others, when analyzing comparable wages and benefits.

In this instance, however, the MAA's approach is preferable given the special nature of attorney duties in San Francisco, which is both a City and a County located at the core of a major urban area. Perhaps, in the future, it also would be advisable to add Marin County to the analysis since it is the only inner Bay Area county that is not included in the MAA's review, although it has a close geographic and social relationship with San Francisco and also undertakes county functions similar to those in San Francisco.

Nevertheless, even if the arbitrator looks to the inner Bay Area as proposed by the MAA, it is concluded that the City's wage proposal should be adopted. The principal reason for this conclusion is that the City has developed a pattern for wage increases throughout its unionized workforce in a series of negotiations that have taken place in the same time period as this proceeding. Internal comparability is a decisive factor under these circumstances, absent evidence of a substantial pay discrepancy that requires an equity adjustment. Such adjustments are not unknown, notably when the City has a demonstrable recruitment and retention problem securing and keeping well qualified personnel, a problem not evident in the City. Hence, while there might be wage differentials to a modest extent when comparing San Francisco attorney classifications to similar classifications in some of the jurisdictions elsewhere in the inner Bay Area, the differentials are not so substantial that an

equity adjustment is compelled, particularly when taking other benefits into account as part of a total compensation package.

Turning to the second issue concerning a general release sought by the City as a requirement for an employee's receipt of a contractual severance payment for years of service, the City's proposal is adopted to be included in Paragraph 73 of the MOU. The MAA contends that the severance benefit is of critical and deserved importance to those in the bargaining unit who have worked as "at will" employees subject to discretionary removal by elected officials. In this context, severance offers a buffer of an earned contract benefit for non-civil service employees faced with the prospect of sudden and substantial financial loss. For the MAA, compelling a general release as sought by the City amounts to an unfair interference with an established MOU right that the MAA negotiated in the past.

Although these are appealing arguments weighing against the City's proposal, in the end the City's position is stronger. Again, internal comparability is a decisive factor as general releases are the norm. Granted, while the City's proposal would secure a general release in exchange for a severance payment, its proposal also makes clear that a departing employee's acceptance of severance, coupled with a general release, is voluntary, and that employees can reject severance and a release in favor of pursuing other legal remedies. For example, an employee believing that the employer has violated both contractual and statutory rights can seek economic, compensatory and punitive damages, and, where provided by law, attorneys' fees for a prevailing party. To the extent the MAA urges that giving the City leeway to develop a form for a general release acceptable to the City, or that claims for indemnity might be barred, or that a release should be mutual, these are issues that can be negotiated by parties when considering the severance question in an individual case. Further, if systemic problems develop in these areas, the issue can be revisited in the next round of bargaining.

AWARD

Based on the presentations of the parties and the findings and conclusions set forth above, the arbitration board renders the following Award:

1. The City's wage proposal is adopted for Paragraph 87 of the MOU.

2. The City's general release proposal is adopted for Paragraph 73 of the MOU.


BARRY WINOGRAD
Neutral Chairperson and
Arbitrator

STEVE KAWA
City Board Member
(concur) (dissent)



NATHAN QUIGLEY
MAA Board Member
(concur) (dissent)

