

File No. 100611

Committee Item No. 5

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 _____

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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Arbitration Opinion and Award</u> |
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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 Brotherhood of Electrical Workers, Local
2 Union 6]

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 Brotherhood of Electrical Workers Local Union 6, AFL-CIO, to be effective
6 July 1, 2010, through June 30, 2012.
7

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

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

12 Section 1. The Board of Supervisors hereby adopts and implements the arbitration
13 award establishing the Memorandum of Understanding between the City and County of San
14 Francisco and the International Brotherhood of Electrical Workers Local Union 6, AFL-CIO, to
15 be effective July 1, 2010, through June 30, 2012.
16

17 The arbitration award establishing the Memorandum of Understanding so implemented
18 is on file in the office of the Board of Supervisors in Board File No. 100611.
19

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

21 By: Elizabeth S. Salvesson
22 ELIZABETH S. SALVESON
23 Chief Labor Attorney
24
25

COLLECTIVE BARGAINING AGREEMENT
BETWEEN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO
AND
THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL 6
JULY 1, 2010 - JUNE 30, 2012

BARRY WINOGRAD
Arbitrator and Mediator
1999 Harrison Street, Suite 1400
Oakland, CA 94612
(510) 273-8755

IN ARBITRATION PROCEEDINGS
UNDER THE SAN FRANCISCO CITY CHARTER

In the Matter of a Controversy Between:)	
)	
)	
CITY AND COUNTY OF SAN FRANCISCO, AND)	
SAN FRANCISCO MUNICIPAL TRANSPORTATION)	Arbitrator's
AGENCY,)	File No. 10-106-MA
)	
)	
and,)	
)	
)	ARBITRATION
CITY AND COUNTY OF SAN FRANCISCO)	<u>OPINION AND AWARD</u>
)	(May 11, 2010)
(Re: 2010 Impasse Resolution))	
)	

Arbitration Panelists: Barry Winograd, Arbitrator and Neutral Chairperson; Kevin Hughes, for the IBEW Local 6; Vitus C.W. Leung for the City and County of San Francisco; Chris Iborra, for the San Francisco Municipal Transportation Agency.

Appearances: Lynn Rossman Faris (Leonard Carder), attorney for the IBEW Local 6; Gina Roccanova and Vicki Clayton, Deputy City Attorneys, attorneys for the City and County of San Francisco and the San Francisco Municipal Transportation Agency.

SF-NTA&IBEW.10-106-MA[S-11-10]

1. Introduction

This memorandum will serve as the Arbitration Opinion and Award for consolidated impasse resolution proceedings involving the City and County of San Francisco and its Municipal Transportation Agency (MTA), and IBEW Local 6. At issue are wages and other terms and conditions of employment for fiscal years 2010-11 and 2011-12. Under Sections A8.409-4 and 8A.104 of the City's Charter, mediation and arbitration is authorized for the resolution of labor-management bargaining impasses.

The undersigned arbitrator was selected to serve as the neutral chair of two arbitration panels. Others who served on the panels are Vitus C. W. Leung for the City and County of San Francisco, Chris Iborra for the San Francisco Municipal Transportation Agency, and Kevin Hughes for the IBEW Local 6.

The Union represents approximately 700 employees in two bargaining units. One unit is comprised of about 250 employees of the City, about 100 of whom work for the Public Utilities Commission (PUC), with the balance employed by other City departments. A second Union bargaining unit is for the MTA, and includes about 450 workers.

The arbitration hearing was conducted on May 4, May 5, and May 6, 2010 in San Francisco, California. At the hearing, the parties were afforded an opportunity to examine and cross-examine witnesses, and to introduce relevant documentary evidence. A transcribed record was prepared. Key budget and finance officials of the City and the MTA testified, as did an expert economist on behalf of the Union. Their testimony, and that of other witnesses, was supplemented by declarations and accompanying analytical materials. Last best offers on issues in dispute were submitted after evidentiary presentations, and prior to closing arguments on the record. Subsequent mediation activity was unsuccessful.

A number of factors are applied to the resolution of impasses under the Charter provision. (See Charter Secs. A8.409-4(d) and 8A.104(n)). As noted below, factors of particular significance for this decision include the financial resources of the employer and limits on raising revenue, terms and conditions of employment for others employed by the City and the MTA, and other aspects of municipal operations, among them the needs of residents and others served by the MTA.

In the background of this proceeding are coordinated negotiations that took place in April 2010 between the City and a

Public Employees Committee (PEC) that is composed of many unions representing other bargaining units covering a large majority of the City's employees. The PEC negotiations involved a third wave of multi-million dollar concession bargaining in the City in the past two years. In these talks, the Union has not joined others in providing concessions. The PEC negotiations followed an announcement earlier in 2010 of a City plan for mass layoffs and for rehiring of City employees under different terms and conditions of employment.

As the Union views this recent history, the City's plan placed a "knife at the throat" of other unions, and forced concessions to avoid mass layoffs, leading to the PEC agreement last month. The PEC agreement is estimated to save approximately \$200 million in wage and benefit expenditures. Some of the PEC-member unions have ratified the agreement, and other ratifications are pending as this decision is being prepared. Separate PEC talks also are taking place for bargaining units for MTA employees.

Unions reaching agreements in the PEC negotiations did not include the IBEW Local 6, or the Police Officers Association, Deputy Sheriff's Association, Machinists Union, Stationary Engineers Local 39, District Attorney Investigators, or the MTA's

transit operators. Arbitration proceedings also have been conducted for Stationary Engineers Local 39 and the District Attorney Investigators.

2. Discussion

A. City and County of San Francisco

1) Furloughs and Wages (City Proposal No. 2.1)

The key issue separating the parties with respect to the City's negotiations involve proposed reductions in compensation in the form of workday furloughs advocated by the City. In broad outline, the City's proposal is similar to reductions negotiated with the PEC; that is, 12 unpaid furlough days in 2010-11, and up to 12 unpaid furlough days in 2011-12. For 2011-12, the number of furlough days may be reduced if certain budgetary triggers are met based on the Joint Report, a budgetary planning document prepared during the fiscal year by the City's controller, the Mayor's budget director, and the budget analyst for the City's Board of Supervisors. As explained at the hearing, the City's proposal contemplates an end to the furloughs after two years, and the restoration of previous compensation levels. Two aspects of the PEC agreement providing

layoff protection and retirement fund restoration are not included in the City's proposal in this case.

When totaled, the furloughs sought by the City are equivalent to a wage reduction of 4.62 percent in each year. In opposing the City's proposal, the Union advocates a one year contract term, with no increase in wages.

On this issue, the City takes the position that it is facing a severe budget shortfall that is part of a larger and continuing public sector fiscal crisis taking place at the regional, state, and national levels. This budgetary crisis flows directly from the economic downturn that has affected the U.S. economy in the past two-plus years, and that is evident in declining municipal revenues from sales, property, and other taxes. There is no material dispute that the City is severely hampered in its ability to raise revenues, particularly by the unlikely prospect of seeking voter approval for tax increases. The City has to deal with fixed costs, some of which are increasing based on service requirements and labor agreements. The City's fiscal reserves also have been tapped beyond budgetary requirements.

According to the Joint Report, a deficit of over \$480 million is projected for the City's General Fund for the 2010-11

fiscal year, unless significant expenditure cutbacks are secured, including concessions from the ranks of labor. The Joint Report projects greater declines in the years following, absent additional cutbacks and concessions. Consideration of the Joint Report is a required factor under the Charter's impasse resolution procedure.

The City urges that its reduction proposal based on workday furloughs is appropriate as it is consistent in large measure with the PEC agreement that has been reached with other unions representing City employees. As noted above, some of these agreements already having been ratified, and other ratification proceedings are pending. The City acknowledges that many employees in the IBEW Local 6 bargaining units work in several departments throughout the City that are proprietary and enterprise departments with funding sources other than discretionary funding through the City's General Fund; for example, the PUC. However, this distinction is not determinative, according to the City, since the City is treated as a single entity under the Charter. Although the MTA is given special status in the Charter by requiring assessment of factors related to its services to the public, the basic Charter considerations apply to that agency as well.

In opposing the City's proposal, the Union argues that the City's financial difficulties are not as dismal as projected in the Joint Report, which, over the years, has understated the actual budgetary outcome when audited results are compared. The Union also contends that it represents employees who work almost entirely in enterprise units, and that these workplaces are not dependent on the General Fund. Applying this distinction, the Union maintains that the enterprise organizations in which its members work have an ability to pay greater than that stated by the City, and that savings in those funds cannot be transferred to augment the General Fund. Moreover, based on the Union's analysis of budgetary projections for the economy as a whole, it maintains that there is an improvement taking place which will increase revenues and permit wage enhancements in future years, or, at least, make reductions unnecessary.

The City's proposal for two years of furloughs is adopted for the reasons that follow. First, the City's proposal is supported by the Charter's mandate to consider the dispute in the context of a single City-wide system that has been established for employee classifications and bargaining units, subject to the relevant factors that are identified. Under the Charter, there is no distinction drawn that would lead to an analysis based on employees working for a specific department, or where enterprise

funds are the source of a department's budget. Since there are electricians who work in units dependent, at least in part, on the General Fund, it would be inconsistent with the Charter to reject a common outcome for some employees, but not for others.

This Charter-oriented approach assures that there will be consistency in the treatment of employee classifications such as electricians, and avoids the problem of employees migrating between departments in search of a better economic outcome or to avoid layoffs. In this respect, the Union's reliance on a state court decision is misplaced. The City's legal structure for paying its employees is different from the statutory design established for state employees under California law, which includes consideration of revenue-generating prospects in resolving compensation and furlough disputes for specific agencies.

A second consideration favoring the City's proposal is that its revenue and expenditure concerns are relevant in assessing the City's financial condition as a whole. Even if a work site or a department is not fully dependent on the General Fund, enterprise fund departments often include substantial and direct support from the General Fund. The MTA, for example, has a significant percentage of its annual budget based on a General

Fund formula designed to subsidize transit services. Further, some enterprise activity is indirectly dependent on General Fund assistance in terms of supportive services and work projects, such as administrative, planning, police, or other functions. The Union's position, if adopted on this issue, effectively would carve out a special, protected class of employees on a departmental basis, disregarding the reality that the City's classification structure cuts across bargaining unit lines.

Related to this point, it is appropriate to weigh the health of the City's ability to govern and to manage its workforce as an entirety because the well being of the City's overall operations is of concern to all who work for it, regardless of a particular workplace assignment. If, for example, the City's General Fund collapsed, there is no realistic scenario that would permit the City's enterprise units to remain functioning unaffected.

A third consideration favoring adoption of the City's furlough proposal is the pattern that has been established through negotiations with the PEC unions, including tentative agreements with organizations that represent a large majority of City employees. In this regard, internal comparability taking into account other City employees is a factor that is explicitly recognized in the Charter.

Also, in assessing electrical workers in the present economy, internal comparisons gain in importance, in part, because municipal electricians are well-positioned in the public and private sector employment markets, and, in part, because the downturn in the private construction industry has diminished the value of looking toward external comparisons. Strengthening this conclusion, the cost-of-living, another factor identified in the Charter, is anticipated to change only modestly in the next year or two.

2) Paid Leave Ordinance Waiver (City Proposal No. 9)

The City urges that its position should be adopted to avoid differential treatment of a small group of employees who have not previously agreed to waive an administrative provision regarding sick leave. Elimination of the difference is consistent with the overall pattern that has been established for most bargaining units within the City, and is warranted in the absence of evidence of an adverse impact on Union workers. The City's proposal will be adopted.

3) Health Benefits Cap (City Proposal No. 11.1)

The City proposes a contribution limit for employees

enrolled in the City's health plan that would be equivalent to the cost of the second highest plan for single employee-only enrollees. Again, this is a pattern following adoption by most if not all unions within the City, and is a reasonable means of shifting a portion of high-end health care costs for the benefit of all. The City's position on this question will be adopted.

4) Appendix B Scheduling Changes (City Proposal No. 15)

The City proposes that a handful of changes in scheduling and related overtime practices are appropriate for employees represented by the Union who are assigned to public works, building inspection, and the PUC. The changes sought by the City would ensure consistency with scheduling already in place for other employees working in the crafts in those departments. To permit the Union's bargaining unit members to continue on a stand-alone schedule would be odds with the needs of the related workforce, and unnecessarily expensive. The City's position is adopted on this issue.

5) Term (City Proposal No. 17)

The City proposes a two year term for the labor

agreement, without a reopener for the second year. This proposal is adopted as it is consistent with the furlough proposal described above.

6) Side Letter Rollovers (Union Last Offer No. 3)

The Union seeks to carry forward on a rollover basis two side letters regarding overtime and parking citation practices. No evidence was provided by the City to counter the Union's proposal, and it will be adopted.

B. Municipal Transportation Agency

1) Wages (MTA Proposal No. 4, Union Last Offer No. 1)

The MTA proposes a 3.75 percent wage reduction for the separate MTA bargaining unit represented by the Union. This reduction does not require any unpaid furloughs, and therefore avoids the possibility of higher costs for the City through backfilling and overtime for furloughed employees. As an alternative, the Union proposes a wage freeze for one year. Both sides agree on a wage reopener for 2011-12, the second year of an agreement.

The MTA's proposal is adopted. The MTA derives a substantial portion of its funding from the General Fund based on a formula that subsidizes transit service. For this reason, and for the reasons noted above in reviewing the City's overall financial condition, it is appropriate to consider the budgetary difficulties facing the City. Supporting this perspective, the Charter provision spelling out the factors relevant to MTA impasse determinations highlights consideration of the services provided to the public, and the ability of the MTA to maintain those services. As of the hearing, the MTA was on the brink of a 10 percent cutback for its services throughout the City. This would be the second major round of emergency service reductions in just over a year.

The Union correctly observes that the MTA's transit operators, even with concessions that they already have made or are expected to make in the near future, still are likely to retain some measure of previously secured wage increases, in contrast to other City and MTA employees. This objection is understandable, but it cannot be controlling since operator wage levels are based on a formula set by law. In the end, the Union's equitable appeal cannot, in effect, overrule and disregard what the Charter compels as a result of a past political decision.

2) Health Benefits Cap (MTA Proposal No. 2)

The MTA's proposal is adopted for the reasons stated in connection with the City's proposal on the same subject.

3) Side Letter Rollover (Union Last Offer No. 3)

The Union's proposal in this regard will be adopted for the one side letter on overtime that is at issue, for the reasons noted above.


4) Parking and Traffic Language Carryover (Union Proposal No. 8)

The Union proposes to add to its MTA labor agreement a contract provision that applied previously when the parking and traffic unit operated under the oversight of the City until those functions were reorganized and transferred to the MTA several years ago. Since the reorganization, the established practice of the parties, including scheduling and overtime payments, has continued under MTA auspices. Given this, the former language should be included in the MTA agreement to properly reflect terms and conditions of employment for bargaining unit personnel.

3. Award

For the Award in this proceeding, Mr. Leung concurs with the arbitrator's decision adopting proposals advanced by the City for its agreement with the Union, and Mr. Hughes dissents from those determinations. Similarly Mr. Hughes concurs with the Union proposal that has been adopted, and Mr. Leung dissents. Regarding the MTA agreement with the Union, Mr. Iborra concurs with the arbitrator's determination regarding MTA proposals that have been adopted, while Mr. Hughes dissents. Similarly, Mr. Hughes concurs with the Union proposals that have been adopted, and Mr. Iborra dissents.

Date: May 11, 2010


 BARRY WINOGRAD
 Arbitrator and
 Neutral Chairperson