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December 4, 2023

OPINION AND AWARD
INTEREST ARBITRATION PROCEEDINGS
PURSUANT TO THE CHARTER OF
THE CITY AND COUNTY OF SAN FRANCISCO

In the Matter of a Dispute Between	)	
	)	
The City and County of San Francisco	)	
and	)	2023 Reopeners
	)	
San Francisco Deputy Sheriffs' Assn.	)	

Appearances:

For the Employer:	Meera H. Bhatt, Deputy City Attorney City and County of San Francisco 1390 Market St. 5th Floor San Francisco, CA 94102-5408
For the Union:	Sean D. Howell, Attorney Mastagni Holstedt 1912 I St. Sacramento, CA 95811-3151

The Arbitration Board:

Appointed by the Employer:	Ardis Graham, Employee Relations Director City and County of San Francisco
Appointed by the Association:	Dan L. Koontz, Labor Relations Consultant Mastagni Holstedt
Neutral Chairperson:	Paul D. Roose, Arbitrator and Mediator Golden Gate Dispute Resolution

STATUTORY AND CONTRACTUAL FRAMEWORK AND PROCEDURAL BACKGROUND

The parties have a collective bargaining agreement in place that runs through June 30, 2024. That agreement includes a reopener clause, in Article V.C (Zipper Clause) Paragraph 277 that reads as follows:

> During this round of negotiations, the DSA produced a variety of documents that it believes may be past "side letters" that it asserts may be binding on the parties. These documents are attached as Appendix D. The City disputes the DSA's contention. However, there was insufficient time during these negotiations to resolve these issues. Accordingly, the parties agree that they shall meet and confer as soon as possible, and not later than April 1, 2023, to review the documents to address what should be included as part of this agreement. Should the parties fail to reach agreement, upon the request of either party, the parties shall submit any issues remaining in dispute to a mediation/arbitration board convened in accordance with the procedures set forth in City Charter section A8.590-5, except that with respect to A8-590-5(b), the parties shall select and appoint board members, including the neutral chairperson, not later than June 1, 2023.

That agreement also includes a second reopener clause, at paragraph 278 in the same article. It reads as follows:

> During negotiations for the July 1, 2022 to June 30, 2024 agreement, the DSA proposed to move the provision related to "muster pay" (currently at paragraph 152 of the CBA dated July 1, 2019 – June 30, 2022) to another section of the CBA. However, there was insufficient time during these negotiations to resolve this issue. Accordingly, the parties agree that they shall meet and confer as soon as possible, and not later than April 1, 2023, to resolve this issue. Should the parties fail to reach agreement, upon the request of either party, the parties shall submit the issue to a mediation/arbitration board convened in accordance with the procedures set forth in City Charter section A8.590-5, except that with respect to A8-590-5(b), the parties shall select and appoint board members, including the neutral chairperson, not later than June 1, 2023. The parties may extend the above deadlines by mutual written agreement.

The parties bargained to impasse over both reopeners.

Under the Charter of the City and County of San Francisco, Section A8.590-5 Impasse Resolution Procedures, unresolved disputes related to wages, hours, benefits, and other terms and conditions of employment are subject to interest arbitration. The recognized employee organization and the employer each appoint a member to an Arbitration Board, and a neutral chairperson is selected by mutual agreement of the parties. The parties, in the instant matter, each appointed an Arbitration Board member and mutually selected the undersigned to serve as the neutral chairperson.

The Charter states that the Board holds a public hearing and receives evidence from the parties. The Charter states that the "Arbitration Board may also adopt such other procedures that are designed to encourage an agreement between the parties, expedite the arbitration hearing process, or reduce the costs of the arbitration process." The Board may also meet privately with the parties in an effort to arrive at a mediated settlement of the issues. The Board met on August 3, 2023, with the parties via Zoom in an off-the-record mediation session. That, and further phone conversations and emails, failed to resolve the issues.

Under the broad mandate outlined in the charter, the Board then decided that the parties would forego an evidentiary hearing on the impasse. The matter would be submitted through written argument, witness declarations, and exhibits. The parties submitted opening statements followed by response briefs, The process concluded with submission of the parties' final offers of settlement and closing arguments on November 15, 2023.

The Board must decide each issue on a majority vote by:

> selecting whichever last offer of settlement most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of 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 other employees in the City and County of San Francisco; and the formulas provided for in this Charter for the establishment and maintenance of wages, hours, benefits and terms and conditions of employment. The impartial Arbitration Board shall also consider the financial condition of the City and County of San Francisco and its ability to meet the costs of the decision of the Arbitration Board." [A8.590-5 (d)]

OTHER RELEVANT CONTRACT PROVISIONS

ARTICLE I – REPRESENTATION

I.I GRIEVANCE PROCEDURE

1. Definition. A grievance is defined as an allegation by an employee, a group of employees or the Association that the City has violated, misapplied or misinterpreted a term or condition of employment provided in this Agreement.

Article III.B Work Schedules

114. Regular Work Day. Unless agreed upon by the City and the Association as set

forth below under the heading "Alternate Work Schedule", a regular workday is a tour of duty of eight (8) hours of work completed within not more than twenty-four (24) hours. There shall be no split shift.

115. Regular Work Week. The Sheriff shall determine the work schedule for employees in their department. Unless agreed upon by the Association and the City as set forth below under the heading "Alternate Work Schedule," a regular workweek is a tour of duty of five (5) consecutive days within a seven (7) day period. However, employees who are moving from one shift or one work schedule to another may be required to work in excess of five (5) working days in conjunction with changes in their work shifts or schedules.

Article III.D. Overtime Compensation

149.[1] Notwithstanding the foregoing paragraph, overtime worked by employees required to participate in a regular daily briefing period shall be paid at a straight time rate for the first one-quarter hour in excess of eight hours per day.

Article V.B

274. This Agreement may be amended or modified, but only in writing, upon the mutual consent of the parties.

Appendix D

L36

Office of the Sheriff

February 21, 2007

TO: The San Francisco Deputy Sheriff's Association

Fr: Captain S. Butler

RE: Satellite Assignments – Non-Rotating Bailiff Assignment

Pursuant to Sheriff Department Policy and Procedure I-42, the Court Service is required to retain 50% of the assignments as Non-Rotating. Section II.C. states: *Incumbent 8304 Deputy Sheriffs in rotating positions will be invited to apply…*

Staff will only be allowed to apply for the Non-Rotating assignment after…

For the SFSD: *[Signed]* Jan Dempsey, Undersheriff Date: *2-22-07*

For the DSA: *[Signed]* David Wong, DSA President Date: *2/28/07*

[1] Under the 2022-2024 contract, this paragraph is numbered 149. Under the prior agreement, it was numbered 152. It is referred to as Paragraph 152 in the reopener language.

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L37

Office of the Sheriff

May 16, 2007 (*revised)*

TO: The San Francisco Deputy Sheriff's Association

Fr: Captain S. Butler

RE: Procedure for Drafting Personnel for City Hall Events

In an effort to ensure all city Hall Events are staffed at the contractual level, the following shall be adhered to when obtaining staffing:

- Available OT posted pursuant to current department procedure
- Draft from within the unit according to department procedure using inverse seniority…
- Drafting applies to ALL shifts from the beginning of the event…

For the SFSD: *[Signed]* Tom Arata, Chief Deputy Date: *May 16, 2007*

For the DSA: *[Signed]* David Wong, DSA President Date: *May 16, 2007*

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San Francisco Sheriff's Department
Inter-Office Correspondence

LETTER OF AGREEMENT – L-44

To: Dave Wong
President – Deputy Sheriff's Association

From: Chief Al Waters
Sheriff's Department Negotiation Team

Date: Thursday, October 11, 2007

Subj: **Overtime Policy I-22 – Involuntary Overtime Draft**

The San Francisco Sheriff's Department Policy and Procedure; Overtime I-22, section II.D.6 states: *An employee may not be involuntarily drafted to work more than 16 total hours or more than three times from RDO to RDO.*

In order to clarify this section of the overtime policy, an employee on duty may not be involuntarily drafted:

a. to work more than 16 total hours in a 24-hour period
b. to work more than 16 consecutive total hours in a 24-hour period; and/or
c. more than three (3) times from his/her RDO to RDO.

For the Administration:

[Signed] Michael Hennessey, Sheriff Date: *11/26/07*

[Signed] Deputy Dave Wong, DSA President Date: *11/12/07*

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DEPARTMENT OF HUMAN RESOURCES CCSF NEGOTIATIONS 2014

Employee Relations **Deputy Sheriffs' Association**

SIDE LETTER REGARDING EARNING AND USING COMPENSATORY TIME OFF

For classifications in this bargaining unit, the language in the Memorandum of Understanding shall be interpreted and understood to provide as follows: an employee with a maximum compensatory time off (CTO) balance (e.g., 160 hours) will not accrue any additional compensatory time until the said balance drops below the maximum compensatory time off balance (e.g., 160 hours), at which time the employee may again accrue CTO to the maximum limit. The CTO earn and accrual maximums are pursuant to the parties' Memorandum of Understanding outlined under Article III.D Overtime Compensation.

FOR THE CITY

SIGNED Christina Fong Date *5/1/14*

Christina Fong, Chief Negotiator

FOR THE UNION

SIGNED Peter Hoffmann Date *5/1/2014*

Peter Hoffmann, Chief Negotiator

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FACTS

The Employer and the Bargaining Unit: The City and County of San Francisco is the fourth largest city in California, with a population of 803,000. It is the second-most densely populated large city in the United States. It is also a world-renowned tourist destination, a primary financial and banking center, and home to iconic structures and services such as the Golden Gate Bridge and the cable cars.

San Francisco is unique in the state of California as a governmental entity insofar as it is the only city that is also an entire county. Local government provides all services traditionally provided by a city and a county. In the arena of law enforcement, this means that San Francisco has both a police department and a sheriff's department. The primary function of the Sheriff's Department (SFSD) is to administer San Francisco's six jails, provide security in San Francisco's courtrooms, and transport prisoners. The Department also provides security for certain government-related facilities in the city. Since the city Police Department (SFPD) handles regular patrol throughout the city, the Sheriff's Department does not have a patrol function similar to other California counties. SFSD currently has 1,000 employees.

Most of the sworn members of SFSD are in a bargaining unit represented by the San Francisco Deputy Sheriffs' Association (SFDSA).

Muster Pay Reopener

Unit Members Receive Compensation for a Regular Daily Briefing Period ("Muster Pay"): Unit members in certain assignments attend fifteen-minute daily briefing sessions prior to the beginning of their shift. The shifts overlap for fifteen minutes with the prior shifts. The parties refer to this activity as "muster." While in the section titled "Overtime Compensation," the CBA specifies that muster pay is paid at "a straight time rate."

The Parties Have a Disagreement About Whether the Muster Pay Should Be Considered Pensionable Compensation: Pensions for unit members are administered by the San Francisco Employee Retirement System (SFERS) for the CA Public Employee Retirement System (CalPERS). In evidence was a December 5, 2022, memo from Employee Relations Representative Elijah Dale to Ken Lomba, President of the Union. The letter states that "The City has confirmed with SFERS and PERS that Muster Pay is not pensionable." The letter also states that "According to the SFERS Miscellaneous Safety Plan under Charter Section A8.610, overtime is excluded from services that qualify for retirement credit."

No correspondence from SFERS to the Employer was in evidence. Nor was any correspondence or declaration in evidence indicating that the Union had independently contacted SFERS or CalPERS to question or contest the designation of muster pay as non-pensionable.

The Union Has Proposed to Move the Muster Pay Sentence and Modify It: The Union's last offer of settlement is to move the "muster pay" provision to Article III.B Work Schedules, as follows (new language in italics)[2]:

> 117. Regular Work Day. Unless agreed upon by the City and the Association as set forth below under the heading "Alternate Work Schedule", a regular workday is a tour of duty of *either* eight hours, *ten hours or twelve hours* of work completed within not more than twenty-four hours. There shall be no split shift.
>
> *118. Regular Work Day – Custody, Classification, CRWU Records, ITS and San Francisco General Hospital. Members assigned to these work locations are required to participate in a regular daily briefing (one on one exchange) and therefore must work an additional fifteen minutes due to organizational needs. Therefore, a regular workday for these assignments is a tour of duty of either eight and one quarter hours, ten and one-quarter hours or twelve and one-quarter hours of work completed within not more than twenty-four hours. There shall be no split shift.*
>
> *…4. The regularly scheduled work hours will be reported to the pension systems as compensation earned.*

The Employer's Proposal is Status Quo: As its last offer of settlement, the Employer proposed to continue the current contract language at status quo.

<u>Side Letter Reopener</u>

The Parties Negotiated a Side Letter in 2014 on the Earning and Use of Compensatory Time Off (CTO): In 2005, the City and DSA agreed to include language in the CBA that employees could earn 160 hours of compensatory time off in lieu of paid overtime. The language specified that employees may not accumulate a balance of CTO in excess of 160 hours.

As part of regular negotiations for a successor agreement in 2014, the parties negotiated the above-referenced CTO side letter. It clarified and interpreted the base contract language. It was signed by the Union's chief negotiator and the City's chief negotiator. No other employer signatures are on the

[2] The Union's proposed change also appears to codify alternate work schedules. The parties did not fully present and argue this issue in the interest arbitration proceeding, so it is not addressed here.

document. No evidence was in the record that the side letter was or was not submitted to the Board of Supervisors when the contract was submitted for board approval.

The So-Called "Earn and Burn" Side Letter Has Been the Subject of Prior Interest Arbitration Proceedings and Administrative Hearings: The City proposed to eliminate the CTO side letter in the 2019 negotiations, but ultimately dropped this proposal.

The Union grieved the unilateral suspension of the "Earn and Burn" procedures in 2020. Arbitrator Luella Nelson, in an August 11, 2021, decision, ruled as follows:

> 1. The City and County of San Francisco violated MOU Article III.D Overtime Compensation, and the May 1, 2014, Side Letter regarding Earning and Using Compensatory Time Off, when it unilaterally suspended the compensatory time off earn accruals for the COVID-19 emergency, as well as the practice commonly referred to as "earn and burn," on March 23, 2020, without meeting and conferring with the Union over those decisions and their impacts on employees.
> 2. As a remedy, the City shall meet and confer with the Union regarding the method of pay for overtime and the use of "earn and burn" during the public health emergency, and shall implement any agreement reached as a result of such meet and confer sessions. Upon termination of the public health emergency, unless agreement has been reached otherwise in the interim, the City shall adhere to the Side Letter.

The Union filed a charge with the CA Public Employment Relations Board (PERB) in 2022. In a July 26, 2022 stipulated settlement, the parties agree that the Nelson arbitration was "fair and regular" and "agreed to be bound by the arbitration decision."

In a January 13, 2023 memo to all employees, undersheriff Katherine Johnson wrote "On or after February 4, 2023, overtime hours worked for compensatory time are eligible under the provision of earn and burn, where an employee's Collective Bargaining Agreement (or side letter) allows for this provision."

The Union Proposes to Incorporate the Language in the Side Letter into the Body of the Contract: At paragraph 153 of the MOU, the Union proposes to add the following (in italics):

> 153. Employees may not accumulate a balance of compensatory time in excess of 160 hours, *except that an employee with a maximum compensatory time off (CTO) balance (e.g. 160 hours) will not accrue any additional compensatory time until the said balance drops below the maximum compensatory time off balance (e.g. 160 hours), at which time the employee may again accrue CTO to the maximum limit.*

The Employer Proposes the Status Quo on the Earn and Burn Side Letter: The City's position is ambiguous. It states that "none of the side letters" should be incorporated into the MOU.

However, in a footnote to its brief, the City writes that "the issue has already been resolved through litigation, whereby the parties executed a settlement agreement. In short, the issue of incorporation of the Compensatory Time Off / Earn and Burn document is moot."

The Union Seeks to Incorporate Three Other Letters into the CBA: Those three 2007 side letters, L-36, L-37, and L-44 are included under Appendix D above. No bargaining history or other account of the origin of these documents was in the record. The parties did not present evidence or argument in regard to the content of these letters.

The Employer's position is to "maintain the status quo" and not incorporate the letters into the MOU.

UNION'S POSITION

The Union's brief quotes from Arbitrator Nelson's decision, in which she cites the provision of the MOU that allows the parties to modify the MOU by "mutual consent." "This arbitrator should not consider the CCSF's argument, that the 2014 side letter is not valid because the Board of Supervisors did not specifically sign off on it, since that issue has already been decided," the Union writes.

The Union also cites from a proposal sent by the Sheriff's Office to the Union during 2022 negotiations in which the Employer states that "the Sheriff's Office believes that the only document provided by the Union as a 'side letter' that should be included in Appendix D is the document dated 5/1/2014 regarding compensatory time off…This is an unequivocal admission as to the providence [sic] of the 2014 side letter, by the CCSF," the Union argues.

The Union contends that the "earn and burn" side letter is "necessary as long as there is a staffing shortage and a 160-hour cap on annual CTO accrual."

The other three side letters meet "the Paragraph 274 definition of amendments and modifications that the Board of Supervisors pre-authorized when it approved the MOU with that language in it," the Union asserts. "There is no functional difference in negotiating a policy or the MOU," the Union adds in its brief. The side letters were "negotiated, written and signed by the parties." The Union further contends that "they are also both subject to negotiation to impasse and then impasse procedures, ending with interest arbitration."

The Union writes, "The dispute regarding Muster was how to document the Muster time in the contract accurately so it pays respect to the fact that the regular work day is extended."

"To be clear," the Union writes, "if it has not already been stated enough, the SFDSA does not ask, nor does it believe this panel has the authority to make any pay pensionable." Muster pay "should be pensionable as it is regularly scheduled hours of work," the Union argues.

The Employer has engaged in "the obvious concealment of pensionable compensation when making its decision" to include the muster pay under "overtime," the Union writes. The Union's proposal "not only removes the erroneous definition of Muster time as 'overtime' but it corrects the regular work day hours in the MOU for those in positions who have to attend Muster. The SFDSA proposed to have the CCSF report to the pension's (SFERS and PERS) that regular pay is compensable pay."

"Because the Union's language simply states the already agreed-upon work schedule," the closing brief argues, "it makes the most sense to adopt." Comparable counties, such as Alameda, identify their alternative work schedules in the MOU, the Union argues.

EMPLOYER'S POSITION

"Based on the MOU's plain language, the arbitrable issue before the panel is extremely narrow. Specifically, the issue is whether the Union has met its burden of proof to warrant changing the status quo as to the placement of the muster pay provision in the MOU," the Employer argues. "The scope of the panel's decision should stay within the four corners of Paragraph 278," the brief continues.

Muster pay is properly in the overtime section, the City contends. "Consistent with the plain language, the City's practice is to administer muster pay as compensation for hours worked in excess of forty hours a week, as muster is overtime," the Employer asserts. However, "muster pay overtime is paid at the time and one-half rate if an employee works an additional shift in which part or all of the shift is paid at the time and one-half rate," the Employer adds.

The issue of pensionability is settled, the City contends. "SFERS and CalPERS have determined that muster pay is overtime compensation and not pensionable," the City writes.

"As for internal parity, the evidence shows that the City has many employees who work overtime, and the City does not report the overtime as compensation earned for pension purposes. DSA effectively invites the panel to single it out for preferential treatment over all other City employees," the Employer contends. As for external comparability, the comparable jurisdictions "differ from the City in that they administer muster as part of the forty-hour work week. By virtue of muster being part of the forty-hour work week in these jurisdictions, muster pay in these jurisdictions is not considered overtime, and is thus pensionable," the City writes.

As for the side letters, "the City's LBFO is status quo (i.e., consistent with the status quo, the above documents should not be included in the MOU)," the City argues. The Employer asserts that at no time have any of the "side letters" ever been part of the MOU. "The 'side letters' did not meet the long-established conditions for incorporation into the MOU since Charter section 11.101 (Employee Relations office) makes clear that the Human Resources Director has the sole authority to 'negotiate and administer memoranda of understanding,'" the Employer argues. Moreover, "Charter section 6.102(6) provides that the City Attorney shall approve as to form all contracts and ordinances," the City writes.

"On their face, none of the 'side letters' contain language stating the parties intended them to be incorporated into the MOU and thus grievable," the Employer contends. The earn and burn "issue has already been resolved through litigation, whereby the parties executed a settlement agreement. In short, the issue of incorporation of the Compensatory Time Off/Earn and Burn document is moot," the Employer asserts.

DISCUSSION

Muster Pay Reopener

The Parties Agree that the Issue of Pensionability is Not in the Purview of the Arbitration Board: No dispute exists that the pension status of muster pay is under the sole discretion of the applicable retirement systems (SFERS and CalPERS). Appropriately, neither party is asking the arbitration board to decide this issue.

Nonetheless, the pensionability of the fifteen-minute daily briefing period is the underlying factor fueling this contract dispute. Both parties believe that the placement of the muster pay provision in the CBA could impact whether the pension board finds that it is pensionable income.

The Union Seeks to Gain an Advantage Before the Retirement Systems by Moving the Muster Pay Provision: The moving party for change on this issue is the Union. The Union believes that it will be unable to achieve pensionability status if the provision is kept in its present location – the "overtime" section of the agreement.

The Employer believes, just as fervently, that moving the muster provision to "work schedules" could result in the pension board changing their determination from non-pensionable to pensionable. The Employer is, understandably, concerned with the financial implications of an additional increment in the daily work schedule being subject to required pension payments.

The Union Has Not Made a Prima Facie Case that the Issue of Pensionability Would Be Impacted by the Placement of the Muster Language: The Union has not persuaded the arbitration board that it has explored all possible measures to secure its desired goal of pensionability without a CBA change. No documents were in evidence indicating that the Union had contacted SFERS or CalPERS requesting an examination of the muster issue. No correspondence from SFERS or CalPERS to the Union or to the Employer was in evidence. The only evidence relating to the pension boards was secondhand memoranda from the Employer recounting exchanges with the pension boards.

The undersigned neutral chair has enough experience with public sector pension systems to know that those entities do not necessarily take representations about pensionability made by employers and unions at face value. They do not rely solely on contract provisions negotiated by the parties. They conduct their own analysis of various compensation components to determine if they are indeed subject to pension calculations in accordance with retirement system rules. The record was incomplete in this interest arbitration proceeding about whether such an analysis about muster pay had been conducted by the pension board. The record was certainly incomplete on the issue of whether placing the muster pay in a different CBA section would impact an analysis by SFERS.

The Burden is on the Change-Seeking Party, and the Union Has Not Met That Burden: The chair of the arbitration board is reluctant to disturb long-established contract language negotiated by the parties without a compelling reason to do so. The burden, in this sense, is on the Union to prove the need for change on this issue.

Had the Union shown that all other efforts to make muster pay pensionable had been futile, other aspects of the interest arbitration charter provisions would have moved to the foreground. The parties began to make arguments about internal and external comparability. Those factors would be much more significant if the Union showed that its proposed contract change would, indeed, result in a re-evaluation of muster pay pensionability by SFERS. For now, the status quo prevails.

<u>Side Letter Reopener</u>

The Treatment of Each Disputed Side Letter is a Separate Issue for the Arbitration Board: By charter, the arbitration board is required to select one side's last offer of settlement on "each of the remaining issues in dispute." The board has the discretion, in the view of the undersigned chair, to determine the designation of "each issue," unless subject to an explicit stipulated agreement between the parties. In the instant matter, the parties have left it to the board to combine, or not combine, the disputed issues.

Four side letters, attached to the CBA as part of the 2022 agreement, are in dispute. The board has examined each one and received the parties' arguments on exclusion or inclusion of those letters in the MOU. While similarities are apparent, sufficient variation exists to require separating them into four discrete issues.

The "Earn and Burn" Side letter is Already Part of the Parties' Contract: No ambiguity exists on the status of the 2014 Side Letter. It is part of the parties' collective bargaining agreement.

The undersigned neutral chair views "collective bargaining agreement" in the broad sense of everything that the parties have properly negotiated and signed off in the realm of wages, hours and working conditions. Whether or not a particular side letter was or was not attached to an MOU document is not the determinative factor as to whether it is part of the CBA.

The Employer at various points asserted that the letter was not properly authorized by employer representatives. The undersigned neutral chair disagrees. On its face, the side letter is properly executed and signed by the parties. It was done at the time the parties were negotiating their successor agreement. It was signed on behalf of the City by Christina Fong identifying herself as "chief negotiator." It was signed by the DSA's chief negotiator. It was on Department of Human Resources letterhead. It looks like, and is, part of a collective bargaining agreement.

If Ms. Fong lacked the proper authority to negotiate and sign it, that was a problem for the Employer, not the Union. It should have been addressed in 2014, not flagged years later. Both parties need to be able to rely on the continued assurance that high-ranking individuals on both sides have the authority to sign binding agreements. Those that do not have that authority need to be instructed to insert language such as "subject to approval by ____."

No such qualifying language was evident in the 2014 "earn and burn" side letter. The arbitration board assumes that, along with everything else tentatively agreed to in 2014, it ultimately went to the Board of Supervisors for adoption. No evidence was in the file that it was excluded.

Moreover, like all parts of the agreement, the 2014 side letter is subject to the grievance / arbitration procedure. Any alleged violation of the side letter, whether for an individual or a group, is grievable.

The Employer wrote that the issue is "moot" because of the PERB settlement. By doing so, they acknowledge that the side letter is part of the collective bargaining agreement. It must be treated as such going forward.

Placing the Proposed CTO Language in the Body of the Contract is Unnecessary and Duplicative: The Union's proposal to insert the wording from the side letter into the MOU at paragraph 153 is not necessary. If adopted, it would create the potential of a new substantive agreement under the guise of memorializing the provision in a new way. Unintended consequences could follow.

The 2014 "Side Letter Regarding Earning and Using Compensatory Time Off" is a valid provision of the parties' collective bargaining agreement. It is to remain attached to the MOU. That is the status quo. The Board thereby adopts the Employer's last offer of settlement on this issue.

The L-44 Letter of Agreement, on Its Face, is a Valid Contractual Agreement Between the Parties: The Letter of Agreement on Overtime Policy I-22 – Involuntary Overtime Draft stands out from the other two remaining side letters. First, it is titled "Letter of Agreement." This contrasts with the other two letters from 2007 that have no titles. Second, it is signed by the sheriff himself, rather than by lower-ranking managers.

These are not trivial distinctions. The sheriff has the presumptive authority to enter into binding agreements with the sheriff's department's unions. A "Letter of Agreement" is more than simply a management interpretation of its own policies. It was a bilateral agreement between the department and the head of the DSA in 2007. No evidence was in the record that the overtime draft agreement was ever modified, rescinded, or challenged since that year.

If Sheriff Hennessey did not have the authority to sign the agreement, that should have been dealt with internally between the CCSF Department of Human Resources and the Sheriff's Department. No evidence was in the record that any such intervention occurred.

Accordingly, the L-44 letter is to be considered part of the parties' agreement and shall remain attached to the MOU.

The L-36 and L-37 Letters are Management Interpretations of Its Own Policies and Hence Not Binding Agreements: Both remaining letters lack the characteristics that make L-44 part of the agreement. Neither has a title indicating that it is an agreement. Both are signed on behalf of management by individuals below the rank of sheriff.

The Union argues that the signing of each letter by the DSA President indicates that they constitute negotiated agreements. It is more likely that the signature of President Wong indicated receipt and acknowledgement of the letters. The Union presented no evidence that negotiations took place or that agreement was reached.

The Union argues that these interpretations by the department of its policies are binding. The Union asserts that any modification to those policies would be subject to bargaining and interest arbitration. That procedural issue is not properly before the arbitration board and is a topic for another forum. Suffice it to say that the CTO side letter and the Overtime Draft letter of agreement are in a different category than the L-36 and L-37 letters. The parties are to remove the L-36 and L-37 letters from Appendix D of the MOU.

AWARD

1. The Arbitration Board selects the Employer's last offer of settlement on the issue of Muster Pay. The contractual language will remain status quo.

2. The Arbitration Board selects the Employer's last offer of settlement on the issue of the Side Letter Regarding Earning and Using Compensatory Time Off. The Side Letter is already a valid, grievable provision of the parties' agreement and shall remain attached to the base contract.

3. The Arbitration Board selects the Union's last offer of settlement on the issue of the L-44 Side letter (Involuntary Overtime Draft). It shall remain attached to the base contract and considered part of the parties' collective bargaining agreement.

4. The Arbitration Board selects the Employer's last offer of settlement on the issue of the L-36 (Non-Rotating Bailiff Assignment) Letter and the L-37 (Drafting for City Hall Events) Letters. They are not to remain attached to the base contract or considered part of the parties' collective bargaining agreement.

_____

Paul D. Roose, Neutral Chairperson of the Board

Date: December 4, 2023

___/s/ *Dan Koontz*_____

Dan Koontz, Association-appointed Board Member

__x___I concur with the Award in part (L-44 Side Letter)

_ x___I dissent from the Award in part (Muster Pay, CTO Side Letter, Side Letters L-36 and L-37)

___/s/ *Ardis Graham*_____

Ardis Graham, Employer-appointed Board Member

__x___I concur with the Award in part (Muster Pay, CTO Side Letter, Side Letters L-36 and L-37)

__x___I dissent from the Award in part (L-44 Side Letter)