

**PURSUANT TO IMPASSE RESOLUTION PROCEDURES
A8.590-5, CITY AND COUNTY OF SAN FRANCISCO CHARTER**

In the Matter of an Interest Arbitration
Between

CITY AND COUNTY OF SAN
FRANCISCO,

and

SAN FRANCISCO POLICE OFFICERS'
ASSOCIATION.

ARBITRATION AWARD

For the City:

LaWanna Preston
Employee Relations Manager
DHR, City and County of San Francisco

For the Association:

Gregg McLean Adam, Esq.
Messing Adam & Jasmine LLP

Arbitration Board:

Neutral Member:

David A. Weinberg
Arbitration Mediation and Conflict Resolution

Association Member:

Gary Delagnes, Consultant

City Member

Carol Isen, Employee Relations Director
City and County of San Francisco

PROCEDURAL BACKGROUND

In accordance with the Impasse Resolution Procedures stated in Charter Section A8.590-5, the parties selected David A. Weinberg as the Neutral Chairperson of the Board of Arbitration. Carol Isen was selected by the City and County of San Francisco (hereinafter "City") to be its Arbitration Board member, and Gary Delagnes was selected by the San Francisco Police Officers' Association (hereinafter "Association") to be its Arbitration Board Member.

The Arbitration Board held public hearings in the City and County of San Francisco at the Hall of Justice on April 16, 17, and 23, 2018. The Arbitration Board also met in private mediation sessions in accordance with the impasse resolution procedures contained in Charter Section A8.590-5, on March 26, 27, April 2, 3, 24, 25, and 30, 2018.

After reaching agreements on a number of issues, the Chairperson directed the parties on May 3, 2018, to submit their last offer of settlement on each remaining issue in dispute. The following issues remained at impasse to be decided by the Board by selecting whichever last offer of settlement on that issue 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 other employees in the City and County of San Francisco and others performing similar services elsewhere; and the formulas provided for in the Charter for the establishment and maintenance of wages, hours benefits and terms and conditions and employment. The Board also considered 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. In weighing each proposal under these factors, the Board also considered the tentative agreements reached by the parties which are incorporated herein by this reference.

PART I: ECONOMIC PROPOSALS

The Neutral Chairperson has considered the total economic impact contained in the parties' final offers and the tentative agreements in making these determinations. Taken as a whole, the implementation of these economic items, contained in the parties' final offers will enable the City to recruit and retain police officers in a competitive urban environment. It reflects the need to have employees maintain pace with cost of living increases particularly when the economic conditions are robust. The evidence presented at the Arbitration supports this perspective. The Chairperson worked with the parties to accept compromises on a variety of these issues so as to maintain competitive comparability with other Bay Area urban police departments while understanding the need of the City to be fiscally responsible and maintain a high level of services for its citizens. The evidence presented at the Arbitration supports the need for the two proposals on POST and retention pay, which are targeted to increase the pay scales in the years of service where the SFPD may be slightly behind the competing urban police departments, such as Oakland and San Jose.

ISSUE #1- WAGES

1. City Final Offer

Article III, Section 1.A. General Wage Increases

188. Employees shall receive the following base wage increases:

~~July 1, 2015 — 1%~~

~~July 1, 2016 — 2%~~

~~July 1, 2017 — 2%~~

July 1, 2018 — 3%

July 1, 2019 — 3%

Effective July 1, 2020, represented employees will receive a base wage increase of 2%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021.

Effective January 1, 2021, represented employees will receive a base wage increase of 1%, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the base wage adjustment due on January 1, 2021, will be delayed by six (6) months and be effective close of business June 30, 2021.

2. Association Final Offer

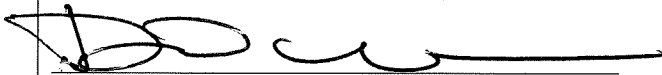
188. Employees shall receive the following base wage increases:

July 1, 2018 — 4%

July 1, 2019 — 4%

July 1, 2020 — 4%

RULING: The Panel accepts the City's final offer on wages.



David Weinberg, Neutral Chairperson- concur
May 4, 2018



Carol Isen, City Panelist ~~concur~~/dissent



Gary Delagnes, Association Panelist ~~concur~~/dissent

Dissent, by Panelist Delagnes:

I respectfully dissent from the Panel's decision on this item because this award will make SFPD less competitive when it comes to hiring new officers, which will lead to increasing failure at the Police Academy and a further lowering of hiring standards.

The evidence presented to the panel showed that the City is in excellent fiscal health. The City, after projecting a deficit, finished fiscal year 2016-2017 with a surplus of approximately \$450 million. Since 2013, the City has increased its cash and investments from \$700 million to \$2.1 billion. In March, the City received its first Aaa rating from Moody's in 40 years. The POA's economics expert, Dr. Rob Fairlie, from UC Santa Cruz, testified that all economic indicators suggest continued strong economic growth over the lifetime of this contract. If ever there was a time for the City to invest in its police officers, it is now.

Instead, this award will cause police officers to fall further behind the cost of living and their primary comparators. Our officers have received 5% in increases over the past 5 years; CPI has increased by more than 15% in that same period and is projected to rise at a level above 3% for the foreseeable future. Young officers, who will not see the benefit of POST and Retention increases, will increasingly struggle to make ends meet and will certainly not be able to afford living in San Francisco. At a time when all sides of the policing debate agree that there is a drastic need to hire hundreds more police officers to keep our city safe, allowing the Department to fall further behind other Bay Area law enforcement agencies will mean that SFPD will struggle to compete and will not secure the best candidates for our Department.

The POA presented evidence from Will Aitchison, who is the foremost expert in the country on police officer compensation, including comparability issues. Aitchison testified on four key points:

- a. That law enforcement nationwide is facing massive recruitment and retention problems. The City, based only on the number of applicants it has received (which is also falling) claims it has no recruitment problem. Aitchison warned that if SFPD is not seeing a recruitment and retention problem now, "it is only a matter of time." He explained that this phenomenon is driving large cities to make significant increases to police officer compensation—he cited San Diego 25%-30% increases (3 years);

Sacramento 17% increase (2 years); Dallas 25% (3 years); St. Louis County 30% increase (1 years).

Testimony under penalty of perjury by two subpoenaed police captains and a sergeant, who all currently help administer recruitment and retention for the Department, support Aitchison's broader view and established three key facts that City leaders should take very seriously.

First, SFPD is, for the first time, and against the advice of its own psychological expert, allowing candidates who score as low as a "C-" in psychological background exam to proceed to the Police Academy. It does this notwithstanding that the Department has concluded that applicants with a C- score have no better than a 50/50 chance of passing the academy. The difference annually between the city's 3% proposal and the POA's 4% proposal is approximately \$3.5 million. The city is unwilling to bridge this divide; yet, it is willing to invest \$200,000 per recruit on C- applicants to the Academy who have no better than a coin flip's chance of passing. (The cost of molding a new police officer, from recruitment through the Academy, costs upwards of \$200,000.)

Second, SFPD, which historically required applicants to post scores in the mid-20's in the Wonderlic Test is now permitting applicants with a score below 20 to proceed to the Academy. A person who scores 20 on the Wonderlic Test is considered to be of average intelligence. This means that SFPD, for the first time, is hiring individuals of below average intelligence—again, against the advice of its own psychological expert.

Third, a Department witness acknowledged that it is reducing the projected number of academies for 2019 and the class sizes of the Academy classes it will run because of a concern about SFPD's ability to recruit qualified candidates.

In this environment, when city leaders profess to be demanding better training and a more diversified department, it should put its money where its mouth is and not try to hire cops on the cheap.

b. Aitchison testified that SFPD should be comparing itself to Oakland PD and San Jose PD. Yet he explained that across all levels of the Department SFPD trails Oakland and San Jose by anywhere from 2.5% to 14.2%. With Oakland scheduled to receive 4.5% in 2018-2019 and San Jose scheduled to receive 6%, SFPD will fall even further behind those agencies next year.

c. Aitchison further testified that SFPD, as the largest department in this area, should be leading the market rather than trailing it or being at average. He was surprised that SFPD lags so far behind in the Bay Area law enforcement market. The City argues that SFPD need only be at the average of the market, and that it is currently slightly above average. But the City achieves this only by manipulating the comparator agencies to include relatively lowly paid agencies such as Fairfield, Daly City and Santa Rosa. Officers in those jurisdictions have an increasingly complex job but those complexities pale compared to policing in San Francisco.

d. Finally, Aitchison pointed out that whereas rank-and-file officers trail their peers in Oakland and San Jose by significant amounts, members of the SFPD Command Staff enjoy compensation levels 20% and more above their peers in those jurisdictions. Aitchison (and the POA) believes that SFPD's Command Staff *should* be at the head of the market; but this only begs the question of why the City believes its rank-and-file officers should be at or below average.

Accepting the City's proposal is a huge misstep by this panel.

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ISSUE #2-POST PAY

1. City Final Offer

Article III – Pay, Hours and Benefits, Sec. X Peace Officer Standards Training (POST) Certificate Retention Pay

X. 1. *Active officers who obtain sufficient education and experience to meet the minimum qualifications of the ranks containing a POST certificate requirement shall be appointed to such ranks within thirty (30) days after they present to the Appointing Officer evidence that they possess the POST certification required for the rank as follows:*

<u>Rank</u>	<u>Basic</u>	<u>Inter.</u>	<u>Adv.</u>
<u>Police Officer</u>	<u>Q-2</u>	<u>Q-3</u>	<u>Q-4</u>
<u>Assistant Inspector</u>	<u>Q-35</u>	<u>Q-36</u>	<u>Q-37</u>
<u>Sergeant</u>	<u>Q-50</u>	<u>Q-51</u>	<u>Q-52</u>
<u>Inspector</u>	<u>0380</u>	<u>0381</u>	<u>0382</u>
<u>Lieutenant</u>	<u>Q-60</u>	<u>Q-61</u>	<u>Q-62</u>
<u>Captain</u>	<u>Q-80</u>	<u>Q-81</u>	<u>Q-82</u>

X1a. Effective July 1, 2018, the rate of pay for the rank requiring intermediate POST shall be 5% higher than the rate of pay for the rank requiring basic POST. The rate of pay for the rank requiring advanced POST shall be 7% higher than the rate of pay for the rank requiring basic POST.

X1b. Effective July 1, 2019, the rate of pay for the rank requiring intermediate POST shall be 6% higher than the rate of pay for the rank requiring basic POST. The rate of pay for the rank requiring advanced POST shall be 8% higher than the rate of pay for the rank requiring basic POST.

X2. 2. *It is the mutual understanding of the City and the Association that the compensation attached to those ranks for which a POST certificate is required is not an increase in the general rate of remuneration for the ranks or position of Q-2, Q-35, Q-50 and 0380, Q-60 and 0460, Q-80, 0488 and/or 0400, within the*

meaning of the Charter of the City and County, including but not limited to Section A8.559-6.

X3. *Should any retiree or other party initiate litigation challenging this mutual interpretation, and the mutual intent of these parties, and seek to obtain an adjustment of allowances for any Police Department retirees pursuant to the Charter of the City and County based upon this Agreement, the SFPOA shall fully support the defense of such claims by the City and County, and shall take appropriate legal steps to intervene in, and become party to, such litigation and in such litigation will fully support the mutual intention of the parties as described in this Agreement.*


X4. *The parties and each and every individual employee specifically agree and recognize that this Agreement creates no vested rights. Should any final judgment by superior court or court of competent jurisdiction at any time adjudge and decree that retirees are entitled to an adjustment of their allowances as a result of the establishment of these ranks, then the Agreement which created these ranks and set a new base rate for such ranks to be included within the rate of remuneration for pension calculation purposes shall be null and void, and shall cease immediately. If such a judgment issues, the parties further hereby agree that the base pay rate and premium of each appointee to these ranks shall retroactively revert to the then current base rate of pay and to the premium eligibility provided by the Memorandum of Understanding prior to the creation of these ranks. The parties also agree to retroactively recalculate the retirement contribution and allowance of such officers as if this agreement had never been in effect. Provided, however, that if such a recalculation should occur, no bargaining unit employee who had received compensation based on the rates of pay for these ranks shall be obligated to pay back any monies which they had received between the effective date of their appointment and the time of such recalculation. Thereafter, the City and the Association shall mutually engage in meeting and conferring in order to reach agreement on alternative benefits*


2. Association Final Offer


Effective July, 1, 2018 POST Certification pay shall increase by 1%. Employees with an Intermediate POST Certificate shall be entitled to 5% premium pay. Employees with an Advanced POST Certificate shall be entitled to 7% premium pay.

Effective July, 1, 2019 POST Certification pay shall increase by an additional 1%. Employees with an Intermediate POST Certificate shall be entitled to 6% premium pay. Employees with an Advanced POST Certificate shall be entitled to 8% premium pay.

RULING: The Panel adopts the parties' final offers on POST as they are substantively the same, along with the additional language set forth in the City proposal.


 David Weinberg, Neutral Chairperson- concur
 May 4, 2018


 Carol Isen, City Panelist, concur/dissent


 Gary Delagnes, Association Panelist, concur/dissent

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ISSUE #3-RETENTION

1. City Final Offer

Article III – Pay, Hours and Benefits, Sec. 4.F. Retention Pay

234. 1. Employees who possess an intermediate POST certificate or higher and have completed the requisite twenty three (23) years or more of service as a sworn member of the Department or Airport Bureau shall receive the following retention pay: 2% retention pay. Retention pay shall be included for purposes of retirement benefit calculations and contributions. Further, it is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who have completed twenty three (23) years or more of sworn service covered by this Agreement.

234a. Effective July 1, 2018, eligible employees shall receive:

Years of Service	Premium Incremental (Cumulative)
23	2.00%
30	4.00% (6% total)

234b. Effective July 1, 2020, eligible employees shall receive the following retention pay, except that if the March 2020 Joint Report, prepared by the Controller, the Mayor's Budget Director, and the Board of Supervisors' Budget Analyst, projects a budget deficit for fiscal year 2020-2021 that exceeds \$200 million, then the increase in retention pay on July 1, 2020, will be delayed by six (6) months and be effective the pay period including January 1, 2021:

Years of Service	Premium Incremental (Cumulative)
10	1.00%
15	additional 2.00% (3% total)
20	additional 2.00% (5% total)
25	additional 2.00% (7% total)

235. ~~Eligible employees who have completed thirty (30) years or more of service as a sworn member of the Department or Airport Bureau shall receive an additional 4% (6% total) retention pay for each pay period during which they are eligible.~~ Eligibility for retention pay is subject to the following conditions and limitations:

- 236. ~~1a.~~ employees must have worked and continue to work (regular paycode 'WKP') not less than seventeen-hundred (1,700) hours in an on-going, consecutive (rolling) twelve (12) month period; and
- 237. ~~2b.~~ employees that have been issued a suspension of ~~thirty (30)~~ eleven (11) or more days during the preceding twelve (12) months shall not be eligible;
- 238. c. employees must have a POST intermediate certificate or higher.

239. Retention pay shall be included for purposes of retirement benefit calculations and contributions as permitted by the Charter. It is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who completed the above defined conditions.

2. Association Final Offer

Employees who have completed ~~twenty-three nine (239)~~ years or more of service as a sworn member of the Department or Airport Bureau shall receive ~~21%~~ retention pay. Retention pay shall be included for purposes of retirement benefit calculations and contributions. Further, it is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who have completed ~~twenty-three nine (239)~~ years or more of sworn service covered by this Agreement.


xx. Employees who have completed fourteen (14) years or more of service as a sworn member of the Department or Airport Bureau shall receive 2% (3% total) retention pay. Retention pay shall be included for purposes of retirement benefit calculations and contributions. Further, it is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who have completed fourteen (14) years or more of sworn service covered by this Agreement.

xx. Employees who have completed nineteen (19) years or more of service as a sworn member of the Department or Airport Bureau shall receive 2% (5% total)

retention pay. Retention pay shall be included for purposes of retirement benefit calculations and contributions. Further, it is the parties' understanding that this benefit is part of the salary attached to all ranks for employees who have completed nineteen (19) years or more of sworn service covered by this Agreement.

235. Eligible employees who have completed ~~thirty~~ twenty-four (24) years or more of service as a sworn member of the Department or Airport Bureau shall receive an additional 42% (~~67%~~ total) retention pay for each pay period during which they are eligible. Eligibility is subject to the following conditions and limitations:

RULING: The Panel accepts the City's final offer on Retention Pay.



David Weinberg, Neutral Chairperson, concur



Carol Isen, City Panelist, concur/dissent



Gary Delagnes, Association Panelist, concur/dissent

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ISSUE #4- WELLNESS (SEPARATION)

1. City Final Offer

Article III – Pay, Hours and Benefits, Sec. 10. Wellness Programs

B. Pilot "wellness incentive program" to promote workforce attendance:

306. A full-time employee leaving the employment of the City upon service or disability retirement may receive payment of a portion of accrued sick leave credits at the time of separation. To be eligible, an employee must have utilized one hundred and sixty (160) hours or less of sick leave during the final two-year period prior to retirement. Sick leave hours donated to catastrophic sick leave bank(s) or used for authorized bereavement leave according to the Civil Service Rules shall not be considered sick leave utilization for purposes of this paragraph.

307. The amount of this payment shall be equal to two ~~and one-half~~ percent (~~2.5%2%~~) of accrued sick leave credits at the time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements, at the time of separation. Vested sick leave credits, as set forth under Civil Service Commission Rules, shall not be included in this computation and shall be compensated pursuant to those Rules.

308. Example of Calculation

Employee A retires with 20 years of service.
Employee A has a sick leave balance of 500 hours.
Employee A has a base salary rate of \$25.00 per hour at the time of separation.

Wellness Incentive = ~~22.5%~~ for each year of service x 20 years of service = ~~4050%~~
~~4050%~~ x 500 hours = ~~200250~~ hours.
~~200250~~ hours x \$25.00 (base salary at time of separation) = ~~\$5,000 6,250.00~~

309. The number of hours for which an employee may receive cash payments shall not exceed one thousand forty (1040) hours, including any vested sick leave.

310. A wellness incentive bonus payment shall not be considered as part of an employee's compensation for the purpose of computing retirement benefits or retirement contributions.

311. The beneficiaries of employees who are killed in the line of duty, whose names are engraved on the Memorial Wall of the SFPD Hall of Justice, shall receive payments provided by the wellness incentive program.

312. The Pilot "wellness incentive program" to promote workforce attendance shall sunset on June 30, ~~2018~~2019.

2. Association Final Offer

307. The amount of this payment shall be equal to two ~~and one-half~~ percent (2.5%) of accrued sick leave credits at the time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements, at the time of separation. Vested sick leave credits, as set forth under Civil Service Commission Rules, shall not be included in this computation and shall be compensated pursuant to those Rules.

...

312. The Pilot "wellness incentive program" to promote workforce attendance shall sunset on June 30, ~~2018~~2019.

RULING: The Panel accepts the parties' final offers on Wellness (Separation) since they are the same.


David Weinberg, Neutral Chairperson, Concur
May 4, 2018


Carol Isen, City Panelist-concur/dissent


Gary Delagnes, Association Panelist-concur/dissent

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ISSUE #5- REFERRAL BONUS

1. City Final Offer

Article II – Employment Conditions, Sec. 21.A. Referral Bonus

A. Referral Bonus

150. An officer who refers a new applicant to the department shall receive a referral bonus of \$1,000 (\$500 upon that candidate's successful completion of the Police Academy and an additional \$500 upon that candidate's successful completion of field training). To qualify, the referring officer must verify that he/she has made at least three contacts with the applicant prior to the start date of the Academy. Officers assigned to recruitment on a full or part time basis will not be eligible for the referral bonus. For purposes of this provision, a "new applicant" is an individual who has not previously applied to be a Cadet or a Police Officer in San Francisco. This provision shall sunset on June 30, 2013 and no new referrals thereafter shall qualify for the bonus.

151. This bonus is not considered "salary attached to the rank" and shall not be included for purposes of retirement benefit calculations and contributions in accordance with those Sections.


2. Association Proposal

150. An officer who refers a new applicant to the department shall receive a referral bonus of \$2000 (\$1000 upon that candidate's successful completion of the Police


Academy and an additional \$1000 upon that candidate's successful completion of field training). To qualify, the referring officer must verify that he/she has made at least three contacts with the applicant prior to the start date of the Academy. Officers assigned to recruitment on a full or part-time basis will not be eligible for the referral bonus. For purposes of this provision, a "new applicant" is an individual who has not previously applied to be a Cadet or a Police Officer in San Francisco. This provision shall sunset on June 30, 2013 and no new referrals thereafter shall qualify for the bonus.

151. This bonus is not considered "salary attached to the rank" and shall not be included for purposes of retirement benefit calculations and contributions in accordance with those Sections.

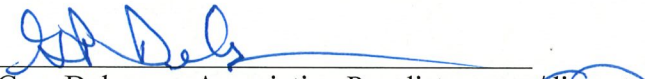
RULING: The Panel accepts the City's final offer on Referral Bonus.



David Weinberg, Neutral Chairperson, Concur
May 4, 2018



Carol Isen, City Panelist concur/dissent



Gary Delagnes, Association Panelist concur/dissent

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ISSUE #6: SALARY STEPS

1. City Last Offer

Article III, Section 1.A. General Wage Increases

XA. Effective July 1, 2018, for Police Officer (Q-2, Q-3, Q-4) employees hired on or after July 1, 2018, there shall be a new step structure as delineated below (illustration based on Q-2):


<u>Employees hired before 7/1/18</u>			<u>Employees hired on or after 7/1/18</u>		
<u>Step</u>	<u>Salary</u>	<u>Diff.</u>	<u>Step</u>	<u>Salary</u>	<u>Diff.</u>

<u>7</u>	<u>\$117,858</u>	<u>5.17%</u>	<u>8</u>	<u>\$117,858</u>	<u>5.17%</u>
<u>6</u>	<u>\$112,060</u>	<u>4.87%</u>	<u>7</u>	<u>\$112,060</u>	<u>4.87%</u>
<u>5</u>	<u>\$106,860</u>	<u>5.01%</u>	<u>6</u>	<u>\$106,860</u>	<u>5.01%</u>
<u>4</u>	<u>\$101,764</u>	<u>9.03%</u>	<u>5</u>	<u>\$101,764</u>	<u>4.32%</u>
<u>=</u>	<u>=</u>	<u>=</u>	<u>4</u>	<u>\$97,552</u>	<u>4.51%</u>
<u>3</u>	<u>\$93,340</u>	<u>3.80%</u>	<u>3</u>	<u>\$93,340</u>	<u>3.80%</u>
<u>2</u>	<u>\$89,920</u>	<u>6.19%</u>	<u>2</u>	<u>\$89,920</u>	<u>6.19%</u>

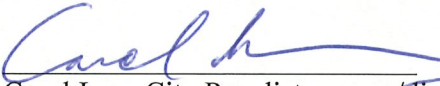
2. Association Last Offer

Status quo—i.e., Reject City proposal for new intermediate salary step between steps three and four.

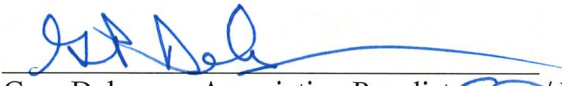
RULING: The Panel accepts the Association’s final offer on Salary Steps.



David Weinberg, Neutral Chairperson, Concur
May 4, 2018



Carol Isen, City Panelist-concur/dissent



Gary Delagnes, Association Panelist-concur/dissent

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ISSUE #7- COMPENSATORY TIME

1. City Last Offer

Article III – Pay, Hours and Benefits, Sec. 2.B. Compensatory Time-Off

B. Compensatory Time-Off

210. 1. Employees who are required or suffered to work overtime shall receive paid overtime. However, employees may request to earn compensatory time-off at the rate of time-and-one-half in lieu of paid overtime, subject to the approval of the Chief of Police or designee and except as provided below:

211. ~~a. Employees may not accrue more than 480 hours of compensatory time-off. Employees with more than 480 hours of compensatory time off as of July 1, 2003 may not accrue additional compensatory time off until and unless their compensatory time off balances fall below 480 hours.~~

212. ~~b. Effective June 30, 2010, e~~ b. Employees may not accumulate a balance of compensatory time in excess of 300 ~~two hundred (200)~~ hours. Any employee who has a compensatory time balance in excess of 300 ~~two hundred (200)~~ hours on June 30, 2010 ~~2018~~, may maintain his or her compensatory time balance, but will not accrue any additional compensatory time until the balance drops below 300 ~~forty (40)~~ two hundred (200) hours.

213. ~~c. Captains with existing compensatory time off balances in excess of 480 hours as of June 30, 2003 may continue to carry such balances provided that such balances may not exceed 1500 hours as of June 30, 2005, and 1300 hours as of June 30, 2007. For those occupying this rank, compensatory time off balances in excess of these amounts on the dates set forth shall be forfeited. Captains newly hired or promoted into such ranks on or after July 1, 2003 may not accrue more than 480 hours of compensatory time off.~~

214. ~~d. Effective July 1, 2008, a~~ An employee that who is promoted to a higher rank shall have his or her compensatory time balances paid out at the lower rank prior to promotion; however, at his/her option, he/she may maintain up to ~~80~~ forty (40) hours accrual.

215. ~~e. The City has the right to pay off accrued compensatory time off above 480~~ three hundred (300) hours at its discretion, so long as such a pay off is uniform, by percentage, as to all employees within their respective one of the four bureaus, (i.e., FOB, Admin., Investigations, Airport).

216. 2. ~~Employees shall provide the Department with 72 hours notice when requesting use of compensatory time off. Compensatory time off requests shall not be denied, except in writing when use of compensatory time off will unduly disrupt operations or when an employee fails to provide 72 hours notice.~~

2. Association Last Offer

Status quo.

RULING: The Panel accepts the Association's final offer on Compensatory Time-Off.



David Weinberg, Neutral Chairperson, Concur
May 4, 2018



Carol Isen, City Panelist-concur/dissent



Gary Delagnes, Association Panelist-concur/dissent

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PART II: NON-ECONOMIC ISSUES

There are two essentially non-economic proposals that remain to be decided by the Panel. The first issue is a reduction in the release time for the POA President. The City, which is requesting a reduction in the number of hours of release-time has not shown a compelling need for such a change at this time. It is the Chairperson's view that in interest arbitration the party seeking a change in the status quo bears the burden to support the need for change, which has not been met. Adopting such a proposal would not be in the best interests of stable labor management relations, especially in a time of great challenges facing the police department and its relationship to the rank and file and the public.

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Issue 8: Release Time for POA President

1. City Last Offer

Article I – Representation, Sec. 6. Release Time for POA Representatives

31. An employee may designate another employee below the rank of Commander to represent him/her in grievance or discipline meetings mutually scheduled with Department management and scheduled appeals hearings without loss of pay or benefits to the extent such representation occurs on regular scheduled time, and provided such use of on-duty time is reasonable.

32. A reasonable number of Association representatives may participate with management in mutually scheduled employer-employee relations meetings on their regularly scheduled duty time without loss of pay or benefits. One Association representative other than the President may be released from duty as necessary to attend public meetings of the Police Commission. This representative shall not appear before the Commission in uniform. This release from duty is subject to the operational needs of the department.

33. The City agrees to provide the POA President with eighty (80) hours of release time each pay period. ~~Sixty (60)~~ Thirty-two (32) of these release time hours each pay period will be on City time. The POA will reimburse the Department for the remaining ~~twenty (20)~~ forty-eight (48) hours each pay period.

34. The POA agrees that the start of the term of office for a newly-elected POA President will coincide with the start of a City pay period. The President's pay rate shall include POST pay and any retention pay for which he/she is eligible. The President shall not be eligible for other pay premiums, other special pays, overtime assignments, or "10B" assignments during the period of release time. The POA President will be considered to be on a standard five (5) day workweek during such release time.

35. While on release time, the President will utilize accrued leave, as appropriate, for any absences. The use of such leave time will be reported to the Departmental Human Resources Officer for accounting purposes.

36. During the ~~sixty (60)~~ thirty-two (32) hours each pay period of City-paid release time, the POA President shall engage only in the following activities:

37. 1. preparing for and participating in meet and confer or consultation with representatives of the City or Police Department on matters relating to employment conditions and employee relations, including wages, hours and other terms and conditions of employment; and

38. 2. investigating or processing grievances or appeals.

39. The POA President shall not participate in any other activities, including but not limited to political activities, during this City-paid release time. The POA President shall provide documentation to the Chief certifying that during each pay period, the POA President used the ~~sixty (60)~~ thirty-two (32) hours of City-paid release time only for authorized purposes. The POA President shall provide this certification at the conclusion of each pay period.

40. The POA agrees to reimburse the City for the balance of the release time, which is ~~twenty (20)~~ forty-eight (48) hours of release time each pay period. The amount reimbursed to the City shall be 1.35 times the base hourly rate of pay for the permanent rank held by the POA President. The POA shall submit the required payment to the Police Department within 11 days after the close of each pay period.

41. It is understood and agreed that during all release time hours, including those for which the City is reimbursed by the POA, the President is required to comply with all applicable departmental and City rules and policies for active duty officers, including attendance at training, maintenance of certifications, and compliance with the substance abuse policy and any applicable departmental Statement of Incompatible Activities. The President will sign a statement to that effect at the commencement of the initial period of release time.

42. As a precondition to providing this release time, the POA agrees to execute an agreement, in a form acceptable to the City Attorney, that indemnifies and holds the City harmless from any legal claims by any party as to the conduct of the President during any period of release time. This agreement will be executed prior to the start of the release time.

43. The parties acknowledge that qualified POA officials utilizing unpaid union leave may be entitled to receive service credit consistent with Charter Section A8.519.

2. Association Last Offer

Status quo.

RULING: The Panel accepts the Association's final offer on Release Time for POA President.



David Weinberg, Neutral Chairperson, Concur
May 4, 2018



Carol Isen, City Panelist-concur/dissent



Gary Delagnes, Association Panelist-concur/dissent

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Issue 9: NEGOTIATION RESPONSIBILITY (DOJ REPORT)

The final issue to be decided by the Panel is City Proposal #22, Negotiation Responsibility. This proposal represents a very well-meaning attempt by the City to help promote the implementation of the DOJ report. In addition, there was impassioned and persuasive testimony presented by the public, which the Panel took under consideration. The Chairperson and all the Panel members agreed that the DOJ reforms should go forward and be implemented. However, for the following reasons the Chairperson and the Panel as a whole cannot adopt the City's proposal. The first issue is that the Chairperson believes that an interest arbitrator should not impose changes that involve a party giving up legal rights. This type of fundamental change should only be made by the parties themselves, and not imposed by a third party. In addition, it is the Chairperson's opinion that such a decision by an interest arbitration panel may very well be illegal, as this is a permissive subject of bargaining. I encourage the parties to continue to discuss ways to mutually expedite the adoption of the DOJ proposals.

1. City Last Offer

Article II – Representation, Sec. 4. Negotiation Responsibility

8. A. Except in cases of emergency, the City/Department shall give reasonable written notice to the Association of any proposed change in general orders or other matters within the scope of representation as specified in Government Code Section 3504.5. The Association shall be provided with the opportunity to meet and confer with regard to any such proposed change should it desire to do so.
9. In cases of emergency when the City/Department determines that a proposed change as described herein must be adopted immediately without prior notice or meetings with the Association, the City/Department shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such change.
10. B. If the Association does not respond within thirty (30) calendar days from the date of receipt of written notification of a proposed change as described in subsection A. hereof, the Association shall be deemed to have waived its opportunity to meet and confer on the proposed change.
11. C. If the Association timely requests the opportunity to meet and confer as provided herein, the City/Department, with the direct assistance and participation of the Employee Relations Division, agrees to meet and confer with the Association over such proposed change or changes, within thirty (30) calendar days of such timely request, unless a longer period of time is mutually agreed upon, in order to freely exchange information, opinions and proposals and to endeavor to reach agreement on the proposed change or changes.
12. D. If no agreement is reached, the matter shall, at the request of either party, be resolved pursuant to the impasse procedures set forth in Charter Sections A8.590-1

through A8.590-7. In addition to the other exceptions set out in the Charter, Staffing matters, except for current safety practices pertaining to two-officer vehicles, shall be excluded from the impasse procedures set forth in Charter Sections A8.590-1 through A8.590-7.

13. E. If the proposed change involves recommendations in the Department of Justice report ("Report") that fall within the scope of representation, the Association shall respond to notice of the proposed change within fourteen (14) calendar days, rather than the thirty (30) day period in Section B above. If the Association requests to meet, and no agreement is reached through meet and confer, then subsection D above does not apply, and the Association agrees to waive its right to factfinding or any other impasse procedure including those under the Meyers-Miliias-Brown Act, the City Charter, and this Agreement. The Department shall identify if the proposed change is to meet a Report recommendation within the scope of bargaining.

14. F. Except as provided in subsection C. hereof, the Association agrees that it will make no proposals for change in the terms and conditions of employment of bargaining unit members for the duration of this Memorandum.

15. FG. This Memorandum sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior and existing Memoranda of Understanding, Understandings, or Agreements, whether formal or informal, are hereby superseded or terminated in their entirety. This Memorandum may be modified, but only in writing, upon the mutual consent of the parties and ratification by the Board of Supervisors.

2. Association Last Offer

Reject—i.e., status quo (no infringement of POA statutory and Charter right to bargain)

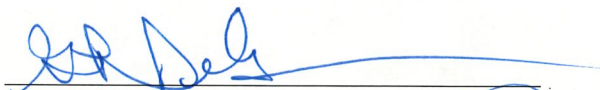
RULING: The Panel accepts the Association's final offer on Negotiation Responsibility.



David Weinberg, Neutral Chairperson, Concur
May 4, 2018



Carol Isen, City Panelist-concur/dissent



Gary Delagnes, Association Panelist-concur/dissent

Concurring Opinion by Panelist Delagnes:

I agree with the Chairperson that adoption of the City's proposal on Negotiation Responsibility would be illegal. It would violate of the collective bargaining rights of the many fine men and women who spend their careers keeping San Franciscans safe.

This was not a serious labor proposal—it was political farce.

Let's start with the claim that the POA is blocking the DOJ Recommendations. It is a red herring. In testimony under penalty of perjury before this tribunal, Chief Bill Scott confirmed as much:

Q: Is there any part that you believe, as chief, any part of the delay in this implementation process has been caused by the POA trying to block it or some other way inhibit the department's ability to put this stuff into effect?

Bill Scott: No, I wouldn't say that.

I mean, I think the -- the processes, as they are, some of them take time, period. Some things can be expedited, others, you know, we may not be able to expedite, but some things take time.

I mean, other --

Q. Yeah.

Bill Scott: -- the policy discussions, the meet-and-confer process. I mean, those things take time. But that is the right of the unions to do that. So I'm not saying that we -- we circumvent. I'm just saying whatever we can do to expedite the process would be extremely helpful.

Q. But as you sit here today, you're not aware of a single instance when the POA has blocked implementation of any of these reforms; is that correct?

Bill Scott: Blocked implementation? No, I can't say that.

The Chief, who, like many on the City side, advanced to the higher reaches of his profession with the support of a strong labor union, recognized that the POA has an important role to play in scrutinizing what SFPD ultimately proposes. After all, when the clamoring crowds move on to their next cause célèbre, our members' lives will still be governed by changes to their working conditions emanating from these recommendations.

Chief Scott explained that since the DOJ issued 272 recommendations in September 2016, SFPD has responded to 81 of them, approximately 30%, Consistent with the

quoted testimony above, the Chief also explained that this figure does not result from delay by the POA or anyone else, but from the sheer scale and complexity of the recommendations.

Let it not be forgotten that the same DOJ report recognized the collaboration of the POA in its research.

What gets lost in this debate is that most of the DOJ recommendation are single sentence. That leaves much to the discretion of the employer. As such, it would be in dereliction of our obligation to our members for the POA to simply waive any bargaining rights.

The City claims that if the POA accepted City proposal #22 it would maintain a “meaningful voice” in the implementation process. Nonsense. Without the backstop of impasse resolution procedures, the City would have no incentive to bargain meaningfully and every incentive to rush to impasse and impose. Just look at how this round of collective bargaining has been conducted.

As this proposal itself exemplifies, lack of meaningful union input leads as often to proposals motivated not by the best long-term interest of SFPD but by short-term political interests. (See, e.g., testimony regarding former Police Commission President Suzy Loftus blowing up an agreement between the City and the POA regarding the Use of Force Policy.)

In the survey conducted in 2016 by the Chamber of Commerce, 78% of San Franciscans supported San Francisco police officers. That is not everyone and the POA recognizes and respects the opinions of the well-intentioned citizens who appeared at the hearing to voice their concerns and their support for the City proposal. Equally, the POA hopes they are open-minded enough about these issues to consider Chief Scott’s testimony as quoted above.

Alas, well-intentioned is not an adjective that can be applied to the actions of Supervisors Fewer, Cohen, Ronen, and Yee along with other supporters of the Resolution supporting the City’s proposal which was recently debated by the Board of Supervisors. The resolution and the actions of those who supported it were based a singular lie, now debunked.

San Francisco has been recognized for decades as a strong labor town. The actions of these supervisors are a disservice to that proud history. San Francisco deserves better than this proposal.

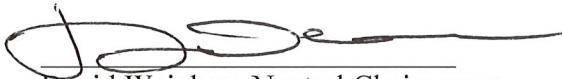
Dissenting Opinion by Panelist Isen:

I dissent from the majority ruling rejecting City Proposal #22.

Speedy implementation of the Department of Justice's ("DOJ") recommendations is an essential objective of the City. Contrary to the Police Officers' Association's claim, the City is not seeking to eviscerate the Association's fundamental right to bargain over the terms and conditions of employment of its members. No one is asking the Association for a wholesale abandonment of its rights. Unions can and sometimes do waive the right to bargain, or waive dispute resolution procedures, in their collective bargaining agreements. The City's proposal is limited in scope, applying only to matters in the DOJ report that impact the employment conditions of Association members. In these limited circumstances, it provides for an expedited meet and confer process without the delay caused by impasse resolution procedures. I believe the City's proposal strikes a reasonable balance between the City's desire for swift implementation of reform measures recommended by the DOJ and the Association's right to have a meaningful say over any impacts on its members' terms and conditions of employment with the San Francisco Police Department.

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This Arbitration Board Award represents the final decision on all remaining issues that remained at impasse. During this process many items were agreed upon in mediation and during the negotiation process. The Panel understands that all the previously agreed upon items are considered resolved and are part of this Arbitration Panel Decision.



David Weinberg Neutral Chairperson
May 4, 2018



Carol Isen, City Panelist



Gary Delagnes, Association Panelist