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May 13, 2014

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	)	2014 Collective Bargaining Impasse
	)	
San Francisco City Workers United	)	

Appearances:

For the Employer:	Na'il Benjamin, Deputy City Attorney City and County of San Francisco 1390 Market St. 5th Floor San Francisco, CA 94102-5408
For the Union:	Alan Davis, Attorney at Law Davis Reno 22 Battery St., Suite 800 San Francisco, CA 94111-5524

The Arbitration Board:

Appointed by the Employer:	Emily Prescott, Employee Relations Manager City and County of San Francisco
Appointed by the Association:	Sylvia Courtney, Attorney
Neutral Chairperson:	Paul D. Roose, Arbitrator and Mediator Golden Gate Dispute Resolution

ISSUE

On each issue remaining in dispute, which last offer of settlement most nearly conforms to the factors specified in Section AB.409-4 (d) of the Charter of the City and County of San Francisco?

STATUTORY AND CONTRACTUAL FRAMEWORK AND PROCEDURAL BACKGROUND

Under the Charter of the City and County of San Francisco, Section A8.409-4 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 (the board), and a neutral chairperson is selected by mutual agreement of the parties.

The board may hold public hearings and receive evidence from the parties. The board may also meet privately with the parties in an effort to arrive at a mediated settlement of the issues. In the event no settlement is reached prior to the conclusion of the hearing, the board directs the parties to submit a last offer of settlement on each issue remaining in dispute. The board then decides each issue on a majority vote by

> selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence presented during the arbitration most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of 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 public and private employment, including, but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco; health and safety of employees; the financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the Board of Supervisors; other demands on the City and County's resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancements or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the arbitration board.

The Charter goes on to spell out the method by which the board must apply the above criteria:

> ...the Board shall issue written findings on each and every one of the above factors as they may be applicable to each and every issue determined in the award. Compliance with the above provisions shall be mandatory.

In the instant case, the parties have a collective bargaining agreement in place that runs through June 30, 2014. During the first few months of 2014, the parties bargained to impasse, and moved forward into the impasse resolution process. The parties each appointed an arbitration board member and mutually selected the undersigned to serve as the neutral chairperson.

The board convened hearings on April 28, April 29, and May 5, 2014 in San Francisco, California. The parties presented evidence through documentation and testimony. Counsel for each party was afforded full opportunity to examine and cross-examine witnesses. Board members were also given an opportunity to question witnesses. At the mutual request of the parties, the board met privately with each party to attempt to reach a mediated settlement. Those efforts were not successful. The parties were then instructed by the board to submit their final offers of settlement to the board no later than 5:00 PM on May 7, 2014. On May 9, 2014, the parties made oral closing statements to the board and the matter was submitted for decision.

BACKGROUND

The City and County of San Francisco is the fourth largest city in California, with a population of 805,000. It is the second-most densely populated 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. The City has core government service and several semi-autonomous governmental entities, including the San Francisco Municipal Transportation Agency (SFMTA), the San Francisco International Airport (SFO), and San Francisco General Hospital.

All painters and painter supervisors who work for the Employer are in a bargaining unit. The unit covers skilled painters who work in the various departments and special entities, including SFMTA and SFO. There are just over one hundred individuals in the bargaining unit, the large majority of whom fall under the classification of Painter Classification # 7346, a journey-level skilled trades classification.

Until 2012, the members of this bargaining unit were represented by the Auto, Marine and Specialty Painters Local 1176 and covered under the Consolidated Crafts MOU. Members of the

bargaining unit went through the process of decertifying Local 1176 as their exclusive representative. They then formed an independent association, naming themselves San Francisco City Workers United (SFCWU). They gained recognition by the Employer as the exclusive representative for the painter bargaining unit. The existing ratified collective bargaining agreement, with a term of July 1, 2012 through June 30, 2014, was amended to reflect the change in exclusive representation. Otherwise, it was not changed. This bargaining cycle is the first one in which the painter classes have been represented by the new organization.

The Employer is also in bargaining with a number of other bargaining units at the time of this award. Some have reached tentative agreements, while others have not and are continuing in the interest mediation / arbitration procedures. All of the City's labor agreements expire on June 30, 2014 except for those covering police officers and firefighters.

APPLICATION OF THE STATUTORY CRITERIA

After three and a half days of hearing and related off-the-record settlement discussions, twelve issues remained in dispute. They fall generally into four categories: 1) wages and benefits, 2) premium pay and differentials, 3) other compensation issues, and 4) rights issues. There was no dispute about the term of agreement. That will be July 1, 2014 through June 30, 2017.

According to the statutory criteria, the arbitration board must "issue written findings on each and every one of the above factors as they may be applicable to each and every issue determined in the award." In its deliberations, the board considered each of the statutory criteria for all disputed issues. Some of the criteria were more relevant for particular issues, and the findings will identify those criteria with respect to each issue.

For the sake of brevity, the statutory criteria will be paraphrased as follows:

1) "changes in the average consumer price index for goods and services": **CPI**

2) "the wages, hours, benefits and terms and conditions of employment of employees performing similar services": **external comparability**

3) "the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco": **internal comparability**

4) "health and safety of employees": **health and safety**

5) "the financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the Board of Supervisors": **the City's financial resources**

6) "other demands on the City and County's resources including limitations on the amount and use of revenues and expenditures": **other demands on City resources**

7) "revenue projections": **revenue projections**

8) "the power to levy taxes and raise revenue by enhancements or other means": **the City's power to raise revenue**

9) "budgetary reserves": **reserves**

10) "the City's ability to meet the costs of the decision of the arbitration board": **ability to pay**

It is important to note that the above-cited criteria are prefaced by a general clause that states that the board must select the settlement offer that "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…" This clause gives the board the leeway to apply criteria that may not fit neatly under the ten enumerated criteria but are generally accepted as traditional in collective bargaining.

One common theme that the reader will note in the findings is that the undersigned holds to the general view that, other things being equal, the moving party on an issue bears a heavier burden. The parties have negotiated the terms of their collective bargaining agreement in past bargaining rounds. Except in those relatively rare circumstances in which an interest arbitrator has dictated the terms of the agreement, the parties have voluntarily created their contract. Needs, means, and circumstances do change, and the parties seek contract modifications accordingly. But, for the most part, longstanding public sector contracts in the state of California change incrementally. The approach of the undersigned neutral chairperson is to honor the past agreements made by the parties to the maximum extent possible while adhering to the statutory criteria.

The board would like to note that the enumerated criteria are not ranked in their order of importance in the statute. It can be argued that the financial factors six through ten should be given little

weight in a bargaining unit of approximately 100 members in a workforce of over 30,000. Given the fact that the parties have agreed on an overall wage package, with the exception of the "me-too" language (analyzed below), these financial factors diminish even further. However, where other factors are not determinative, these financial factors can take on meaning, as noted in a couple of the issues below.

On a final note, both parties in this dispute made claims that certain proposals by the other party were submitted late under the negotiations ground rules agreed to by the parties. The Employer, in particular, has asked the neutral to disallow consideration of late-submitted proposals in this award. The board will not automatically disqualify any proposal from either side due to late admission. If the proposal comes at such a late time as to preclude the other side from adequately researching the issue and responding, then this would be taken into consideration in the board's findings. None of the proposals detailed below came into the process at such a late date that the other side should have been hampered in its ability to respond.

DISCUSSION AND FINDINGS

The "discussion and findings" section of this decision will be organized as follows. Within the four sub-groups listed above, each issue in dispute will be named. The issue will be followed by the current contract provision (if any) governing that issue, and any other significant factors relative to the status quo. Then the parties' final offers of settlement on the issue will be summarized. Next, the undersigned will discuss the disputed issue, identify any statutory criteria that particularly apply in the dispute, and decide the issue by supporting either the City's or the Union's final offer of settlement on the issue. A summary of all the board's decisions will be included at the end, under "Award."

Wages and Benefits

Wages: In the two-year agreement set to expire on June 30, 2014, there were three separate 1% base wage increases. Both parties have submitted the following percentage increases to base wages as their last offer of settlement.

October 11, 2014 – 3%
October 10, 2015 – 3.25%
July 1, 2016 – CPI-based increase with a minimum of 2.25% and a maximum of 3.25%

The only difference between the Employer's proposal and the Union's proposal is that the Union has proposed a "me-too" clause. That clause is worded as follows:

> In the event that any other bargaining unit(s) receives wage increases which exceed the increases set forth in subsections a, b, or c, above, the same increases shall be applied to the members of this bargaining unit at the same dates such increases are applied to the other bargaining unit(s).

Discussion and findings: The board does not favor "me-too" clauses, in general, unless they are voluntarily negotiated by the parties. They are fraught with peril in their interpretation (what exactly, for example, is a "wage increase?" and how long would such a clause apply?) Such clauses also gloss over the fact that different unions may reach different agreements with the same employer that involve certain trade-offs, economic and/or non-economic. Whether such an agreement might be "better" or "worse" than another agreement negotiated earlier in the bargaining cycle may be impossible to quantify.

Moreover, the Union has not identified any other bargaining unit among the City's many units that has negotiated such a "me-too" clause in this bargaining round.

Based in particular on the factor of "internal comparability", the board selects the Employer's last offer on wages.

Health Benefits: In 2012, the City's unions (including the predecessor to SFCWU) negotiated for the first time an employee share of employee-only health premiums. That share was 10% for all plans, except for the highest-cost plan (City Plan). Due to a complex interaction between collective bargaining agreements and the City Charter (which establishes a contribution minimum based on a ten-county comparison), unit members with Kaiser single and employee plus one ended up paying only about one percent, rather than ten percent of the premium. Unit members who chose Blue Shield HMO at those coverage levels paid about ten percent. Kaiser and Blue Shield family coverage members paid significantly more than 10% under that 2012 bargaining agreement formula. This year, Blue Shield family premiums climbed to almost $500 per month, while Kaiser family premiums were around $250 per month.

In 2013, the City's health plan system administrators became very concerned about migration out of the Blue Shield HMO plan, and proposed a restructuring of premiums. This new alignment, dubbed the "93/93/83" plan, dictates that the Employer pay 93%, 93% and 83% of employee only, employee plus one, and employee plus two premiums for the two lowest-cost plans. Under this new structure, some unit members would pay less in premiums and some would pay more. The City's overall premium costs, at least in the short run, would rise.

Many unions, including the crafts coalition that the painters were part of until 2012, agreed to the proposed changes mid-contract. Others, including SFCWU, did not.

The Employer's final offer of settlement on this issue is to adopt this new premium percentage model effective January, 2015. The Union proposes retaining the status quo. The Employer argues that this is a better deal for both sides, that many unit members' premiums would diminish, that a majority of City unions have already agree to the new plan, and that it is important to solve the "out-migration" problem. The Employer does not contend that retaining this bargaining unit under the present system would create an undue administrative hardship on the City.

The Union argues that, while some members will benefit from the change, others will not. The Union finds the Employer's proposal to be somewhat attractive, but is not yet "sold" on its overall benefit to unit members.

Discussion and findings: The burden falls on the City to show why this change to the CBA is necessary. The Employer is not attempting to make the case that this is a concession it needs from this union. It is making the case that, in the long run, what it proposes is a more sustainable premium structure that will reduce overall premium costs. However, the Employer acknowledges that, over the proposed term of this agreement, the change would result in higher Employer costs.

The Union's proposal of "status quo" is one that it may decide to rethink over the next three years. As the City did during the 2012-2014 agreements, perhaps an offer to open this issue during the 2014-2017 term will be forthcoming. A detailed analysis of how the change would impact unit members might lead to a voluntary agreement. However, given the truncated history of the parties' bargaining on this issue, the Union's proposal of "status quo" is the one that best conforms to the statutory criteria.

Based in particular on the factor of "the City's financial resources", the board selects the Union's last offer on health benefits.

Premium Pay and Differentials

Height Work Pay: The current CBA includes a height work premium of $2 per hour for work requiring personal fall restraints when working fifty feet above ground. The Union has submitted a final offer to lower the height requirement for receipt of the premium pay from fifty feet to fourteen feet above the ground. The Employers' final offer is status quo.

It is not clear from the record exactly how the current language is interpreted. The language appears to require both the wearing of restraints and working above fifty feet in order to receive the premium. There was no evidence presented as to how the fifty feet is measured. For costing purposes, the

Employer assumed that the height is measured to the height a painter can reach. However, the only policy introduced into evidence, as detailed below, measures from the ground or floor to the painter's feet.

Also submitted were Cal-OSHA regulations concerning Fall Protection. While the document entered into evidence does not specify a height, there was unrebutted testimony that the Cal-OSHA regulation requires personal fall restraints for work above seven and a half feet. However, the regulation appears to distinguish between work using scaffolding (where personal fall restraints are not required) and work using lifting devices, where personal restraints are required.

Discussion and findings: The Union submitted extensive documentation and testimony on this issue at hearing. Included were the safety policy and procedures of SFO, where a significant portion of the bargaining unit is assigned. Those procedures require the unit member (as well as all SFO employees) to wear a "full body harness and shock-absorbing lanyard when working at an elevation of six feet or more above the grade, floor, or approved work surface..." The height is to be measured from the grade, floor, or surface to the person's feet.

The contracts between the City and the plumbers union and the City and the sheet metal workers were brought into evidence as internal comparators. Those contracts pay those other crafts a $2 an hour premium for performing work two floors or fourteen feet (whichever is less) above ground. The City's contract with the IBEW calls for a height premium for electricians working thirty feet or more above the ground. The Northern California Master Painters Agreement (private sector) specifies a "high time" premium for work above fifty feet.

Airport facilities manager William Loeffler testified that plumbing and sheet metal work at heights is inherently more dangerous due to the heavy parts that need to be handled by the craftsperson. He also confirmed the SFO policy outlined above concerning the requirement to use personal fall restraints when working above six feet. He stated that all height work at the airport is performed on scissor lifts that start low to the ground. Lifts come in various sizes, and some can extend above fifty feet. Bargaining unit members performing painting duties from a lift are required to wear harnesses at all times.

The board finds that the Union has met its burden of persuasion on this issue. The board was not sufficiently convinced by management's efforts to draw a distinction between the safety aspects of a plumber or sheet metal worker working at heights and a painter working at heights. Certainly, no such distinction can be found in the Cal-OSHA regulations or in the SFO policy. The current premium applies

to work above fifty feet. There was no evidence on the record to establish why work at fifty feet and above is inherently more dangerous than work at fourteen feet and above.

Since this modified Union proposal came relatively late in the process, there was no costing of the Union's proposal. It should be noted that the Employer's original costing of the Union's proposal, ascribing a cost of over $400,000, was based on the faulty assumption that everyone in the bargaining unit would receive the premium for all hours worked. Clearly, this was not the case, even with the Union's original proposal of a premium above six feet. It should also be noted that the language, when implemented, requires the premium only when the unit member is working above fourteen feet and wearing personal fall restraints. There appear to be different OSHA standards when scaffolding is being utilized than when lifting devices are in use. The Employer will have an opportunity to control the cost of this premium by its management of high work projects.

Based especially on the "internal comparability" criteria and the "health and safety criteria," the board selects the Union's last offer on height work pay.

Lead Worker Pay: The current CBA reads as follows:

> Employees in the covered classes, when designated in writing by their supervisor or foreman as a lead worker, shall be entitled to a ten($10.00) per day premium where required to plan, design, sketch, layout, detail, estimate, order materials, and take the lead on any job where at least two mechanics[1] are assigned.

The current practice for payment of lead pay appears to be somewhat more expansive than the language indicates. Testimony was offered (although no document was submitted) that the City budget and legislative analyst performed a citywide audit of lead worker pay practices in 2011. The audit determined that "...managers assigned lead worker pay to employees who are considered to [plan], design, sketch, layout, detail, estimate, or material [sic] even when they have no lead responsibility for another employee." Union witness Doug Bias testified that he is the sole painter at City Hall and has received lead worker pay since 2000.

Evidence was also introduced that building and grounds maintenance superintendents, represented by Stationary Engineers Local 39, supervise painters and other trades craft personnel in locations where there are no Supervising Painters. Their job description includes the sentence "Supervision includes local administrative control and work assignments of craft personnel on extended

[1] The parties agreed that this term is a traditional trades reference that in this context refers to journey-level painters. The Union proposes to modify this to "painters."

or temporary assignments." The description goes on to read that "Craft general foreman will supervise their respective workmen in those matters pertaining to craft or trade techniques or methods."

The Union proposes to modify the contract to add the following sentence:

> Workers, who are the sole painters in the shop and who plan, design, sketch, layout, detail, estimate order materials, as set forth in the first paragraph, above, and who are unsupervised by classes 7242 Painter Supervisor I or Painter Supervisor II, shall be paid the lead worker premium.

This final offer from the Union was a modification of earlier proposals, but consistent with other proposals they had made that address the issue of lead pay for solo painters under some circumstances. The Union cites as supporting evidence a prior agreement between these two parties from 2003 – 2005 in which a similar provision was included. The Union argues that the language it proposes merely codifies existing practice.

The Employer's last offer is to maintain the status quo. The Employer argues that the City has no other current labor agreement that contains the provision the Union seeks. Moreover, the City contends that the Union is seeking lead pay for work that is part of the core painter job description. The City is not seeking to modify existing practices on the payment of lead pay.

Discussion and findings: The burden, in this instance, falls on the Union to show the necessity of the language change. Since the Employer has not put the Union on notice through the bargaining process that it intends to take away lead pay in those instances where it is currently being paid, then there is no compelling reason for the additional language. The fact that the Union could point to no other City contract containing a similar provision reinforces this conclusion.

Based in particular on the factor of "internal comparability", the board selects the Employer's last offer on lead worker pay.

Taper Premium: The current CBA includes language as follows:

> Employees in classification 7346 Painter shall receive an additional seventy-five ($.75) per hour for each hour assigned as a taper. Effective July 1, 2002, the rate shall be one dollar ($1.00) per hour.

This is a premium that is unique to the painter craft, and hence has no internal comparators within the City. The Employer costs this proposal at approximately $4,000 per year. The cost of a 1% increase for this bargaining unit is $107,000 per year. The painter job description includes preparing surfaces, including tape, for painting. It does not include actual taping.

The Union proposes to increase the premium from $1.00 per hour to $1.25 per hour. The Employer's last offer of settlement is to retain the status quo.

Discussion and findings: The union proposes a 25% increase in the taper premium. While this is a large increase, the premium has not been raised since 2002. Arguably, there has been at least a 25% increase in the CPI since 2002. What is also notable is that the parties have a history of increasing this premium, as they last did in 2002. The cost of implementing the Union's proposal would be less than .05% of annual bargaining unit payroll. For those in the unit who perform this work that goes beyond the painter job description, it seems reasonable that they should be paid a premium that keeps up with inflation.

Based especially on the "CPI" criteria, the board selects the Union's last offer on taper premium.

Epoxy & Industrial Coating Premium: The current CBA provides for a $1 per hour premium to be paid for those hours actually spent in applying epoxy. Other City unions, including the plumbers, receive this same epoxy premium. The painter job description includes the following:

> Applies paint and other protective or decorative finishes…
>
> Mixes and prepares paints, lacquers, varnishes, shellacs and other preservatives

The Union seeks to add "or industrial coatings" to the language. And it seeks to add the following language to the agreement:

> Industrial coatings shall be those defined as any protective coatings listed under Regulation 8, Organic Compounds Rule 3, Architectural Coatings Index / Bay Area Air Quality Management District, and are applied to any non-residential structure, facility or complex. The City agrees to provide any manufacturer and/or OSHA required training, material and/or (PPE) personal protective equipment.

The cited regulation includes a section entitled "Industrial Maintenance Coating" that Union witnesses identified as being the section they intended to define the applicability of the premium. That section defines "Industrial Maintenance Coating" as:

> A high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates, including floors, exposed to one or more of the following extreme environmental conditions…

The definition goes on to delineate those extreme conditions.

The Employer's last offer of settlement was to retain the status quo in this area.

The Union argues that the title of this premium section infers that more than just epoxy should be included under the premium definition. Union witnesses testified to other materials they work with that are as hazardous and difficult to work with as epoxy.

The Employer contends that the proposed list of compounds to be incorporated into the agreement is overly broad, and that the Union has not identified such a definition in any other CBA.

Discussion and findings: The Union has not met its burden that incorporating the proposed definition into the document is appropriate. The undersigned neutral chairperson acknowledges that the title of the section implies that substances other than epoxy were intended to be included under this premium. However, the air quality district citation section identified as relevant by the Union includes substances, such as primers and sealers, which are arguably part of the regular painter duties. The proposal is ambiguous and, if included, would open the parties up to potential endless disputes about what is and what is not covered under this new definition. If in fact the current practice is to pay this epoxy premium for other non-epoxy industrial coatings, the Employer has not proposed to change any of these practices.

Based in particular on the factors of "external comparability" and "internal comparability", the board selects the Employer's last offer on epoxy and industrial coating premium.

Thermo-Plastic Applicators: The current CBA includes the following provision:

> Employees in classifications 7242 Painter Supervisor II, 7278 Painters Supervisor I and 7346 Painter who are assigned to operate a thermo-plastic applicator shall be paid a premium of two dollars ($2.00) per hour for each of those hours that said individual actually operates such an applicator. This premium shall be payable only to the individual who operates said applicator.

This provision applies primarily to unit members who work repairing and modifying city streets in the SFMTA division.

The Union's last offer of settlement on this issue is to increase the premium from $2 to $4 per hour. In addition, the Union seeks to pay unit members who support thermo-plastic application $2 per hour. Finally, the offer adds a list of assignments that are to be included in the $2 premium, as follows:

> bituminous adhesive driver / tender
> thermo-plastic driver / tender
> traffic hazard premium when on-foot and engaged in the hazard of vehicular traffic

Linex-Scarifier machine operator
any vehicle with a water blaster
methacrylate truck operator
paint removal equipment operator
line lazer

The Union presented evidence of several City CBAs that contained provisions that the Union believes bolster its proposal. Those included the parking control officers, represented by SEIU Local 1021, who receive a 5% premium for "intersection and/or traffic control duty." The Union asserted that this premium for parking control officers is support for the Union's "traffic hazard premium."

Also identified was a provision in the City's contract with Laborers Local 261 that pays $1.35 per hour for "pot workers" and "asphalt screed workers." Union witness James Leonard testified that this work performed by the laborers is equivalent to the "bituminous adhesive" work in the Union's proposal.

The Union also introduced excerpts from the City's contract with the Teamsters that provide premiums for driving certain specialized vehicles.

The Union introduced no evidence of internal or external comparability to buttress its $4 per hour proposal.

Union witness Leonard also testified that certain work assigned unit members at SFMTA that is not thermo-plastic application is currently paid the premium. He testified that the line lazer operator "sometimes" receives the premium when spraying epoxy or industrial coating.

The Employer offers the status quo as its final offer of settlement. The Employer argues that the Union has not met its burden in showing through internal or external comparability that the changes are justified. The Employer is not asserting an intention to change the existing practice.

Discussion and findings: Portions of the Union's proposal have merit and deserve additional discussion between the parties. It appears that this contract section needs to be updated based on the changing requirements of painter work at SFMTA. The work of the unit's members at SFMTA sounds difficult and requires many special skills. However, the board is not authorized to pick and choose between various aspects of a partially-meritorious proposal. The Union has not met its burden of justifying the need to double the thermo-plastic premium. Even in those cases where it has linked unit work to work being performed by other City bargaining unit members, the duties and premium amounts diverge substantially. And some of the newly named duties in the proposal were supported by little or no evidence.

Given that the Employer is proposing to retain current language and not suggesting a change in existing pay practices, the Employer's offer most closely conforms to the statutory factors.

Based in particular on the factors of "external comparability" and "internal comparability", the board selects the Employer's last offer on thermo-plastic applicators.

Other Compensation Issues

Paperless Pay: There is currently no provision in the CBA that governs how unit members are paid, administratively. The practice has been to allow unit members, and all City employees, to receive their pay through direct deposit or check.

The Employer proposes to eliminate paper checks and pay advices, effective September 1, 2014. Its last offer of settlement is to add a section to the CBA that governs payment by either direct deposit or "pay card." The highlights of that proposal are as follows:

- Employees will be able to access their pay advices on City computers or at home
- Pay advices will include additional information about employee leave balances, etc.
- Pay advices will be available on a secure website going back seven years
- Employees may choose to be paid through direct deposit or pay card

The Employer states that it has worked with other employee organizations to address concerns they had about the new system. The Employer has agreed to bargain the issue, although arguably it is outside the mandatory scope of bargaining.

The Union proposes to retain the status quo on this issue, stating that the Employer has provided no evidence to support its proposal.

Discussion and findings: The Employer has gone "the extra mile" on this issue. Given that the current CBA is silent on the issue, it is presumably an issue on which the City could have merely consulted with the union. Instead, they engaged in full-blown bargaining over the issue. While they did not receive counterproposals from this Union, they did from other City unions, and they incorporated many of those counterproposals into their last offer of settlement. They reached agreement with many City unions on this very proposal. There is nothing about this proposal that appears to be a diminishment of unit member working conditions. The City has met its burden of persuasion on this issue.

Based in particular on the factor of "internal comparability", the board selects the Employer's last offer on paperless pay.

Airport Employee Transit Program: There is currently no provision in the CBA for subsidizing employees who utilize public transit to commute to work. However, there is a section of the CBA, III.X

"Automobile Use, Allowance and Parking; Muni Passes." That section currently has no reference to free or subsidized transit options for employees.

The Employer proposes to implement a provision entitled Airport Employee Transit Pilot Program. Under this 12-month pilot, employees who use public transit to commute to their jobs at SFO will be subsidized. The last offer of settlement includes the following:

> The Union waives all meet-and-confer on this pilot program. This program is not subject to the grievance procedure.

The Employer contends that this is a pure benefit to Union members, and that further meet and confer is not necessary, since it is only a pilot program.

The Union proposes status quo on this issue. The Union objects to the proposed waiver of meet and confer rights.

Discussion and findings: While the City's proposal appears harmless, if not beneficial, it is plausible that the Union has legitimate concerns about it. This would be a subsidy only available to a subsection of the Union's members, and hence could result in some dissension between members. It is an expenditure of City resources on benefits for unit members in such a way as has not been voluntarily bargained by the parties. And the undersigned neutral views this issue somewhat differently than the "paperless pay" issue, in that a section of the agreement already exists on a related topic (Muni Passes). This is an indication that the parties have a history of bargaining over transit subsidies. Accordingly, the board finds that the Employer has not met its burden on why this provision should be included in the CBA.

Based in particular on the factor of "the City's financial resources", the board selects the Union's last offer on Airport Employee Transit Pilot Program.

Rights Issues:

Bargaining Unit Work: The current CBA contains a clause that reads as follows:

> The City agrees that it will not assign work currently performed by employees under this Agreement to City employees in other bargaining units.

The unit includes painters and painter supervisors. It is both the performance of painter and painter supervisory duties that concerns the Union. Union witness Doug Bias testified as follows:

> ...we've had a practice where painters [are] being supervised by carpenters, for example, or engineers. And we thought that that was incorrect.

Mr. Bias also testified that public service aides represented by SEIU Local 1021 have been performing painter duties at SFMTA.

When asked how the existing language is inadequate to address the Union's concerns, Mr. Bias responded as follows:

> It doesn't define who is doing our work clearly enough.

The Union's last offer of settlement on this issue is to add the following sentence to the existing contract section:

> Bargaining unit work includes, but is not necessarily limited to, duties currently specified in the job announcements in classes 7346 Painter, 7242 Painter Supervisor I and 7278 Painter Supervisor II.

The Employer proposes the status quo as its final offer of settlement. The Employer believes that the current language is adequate to address the scenarios that are of concern to the Union. The Employer also contends that the addition of the phrase "not necessarily limited to" is overbroad and ambiguous. It also has concerns that adoption of the Union's proposal could impinge on the rights of other City unions.

Discussion and findings: The Union bears the burden about why this important contract clause needs to be modified. While the Union made reference in the hearing to a grievance that it had filed on this issue, no evidence was introduced about the outcome of that grievance or any other grievances on the issue of bargaining unit work. The existing language appears clear and to the point. The Union has pointed to no other City contract that has similar language.

Grievances under this CBA are subject to final and binding arbitration. Without testing this language in front of a neutral grievance arbitrator and discovering inadequacies through an unfavorable ruling, the Union has a weak case for change. An arbitrator hearing a grievance on a violation of the existing clause would most likely rely heavily on the very documents that the Union wishes to reference in the contract language, even absent the Union's proposed change. The Union has not met its burden of persuasion on this issue.

Based in particular on the factor of "internal comparability", the board selects the Employer's last offer on bargaining unit work.

Grievance Procedure: The current CBA has a grievance procedure that contains several clauses that one party or the other is seeking to modify. The current agreement contains an expedited arbitration clause that was added to the contract in the last round of bargaining. That clause requires that disciplinary suspensions of fifteen days or less are subject to the expedited procedure. It also requires that contract

interpretation grievances "where the remedy requested would not require approval by the Board of Supervisors" be subject to the expedited procedure. The expedited procedure involves no transcripts or post-hearing briefs and it allows the parties to name a permanent arbitrator. The Union is seeking to delete this procedure, and substitute the following language:

> Upon mutual agreement between the City and the Union, expedited arbitration may be used to hear appeals of all disciplinary actions short of termination.

The Union cited an expedited grievance arbitration that took place between the parties in September 2013 on a claim that a unit member released on his probation period had actually completed his probation period. The Union asserts that this case was inappropriate for expedited arbitration.

The Employer's last offer of settlement leaves the expedited arbitration section intact. But it modifies the grievance procedure in two other areas. One – the current language allows an individual unit member to appeal non-discipline grievances to step 3 of the procedure. The Employer proposes to allow only the Union to make such an appeal. And two – the current agreement contains no time limit for the selection of an arbitrator once the Union has notified the Employer that it is invoking arbitration. The Employer's last offer is to add the following:

> [the parties] will commence selecting the arbitrator and scheduling the arbitration within thirty (30) calendar days of the Union's receipt of ERD's letter acknowledging the Union's letter moving the matter to arbitration…

The Employer argues that these provisions are contained in other City labor agreements and that they provide for a more efficient grievance procedure.

Discussion and findings: Each party, in this instance is seeking to modify the status quo in one or more areas of the grievance procedure, and retain the status quo in the other. Both parties have the burden of showing why their change needs to be incorporated into the agreement.

The undersigned neutral chairperson believes that all three of these changes have merit. The current expedited arbitration procedure is utilized for issues (such as complex contract grievances and long suspensions) that generally do not fit well in an expedited format. The case heard in September 2013 appears to be complex enough that it would have been better handled under the regular procedure. (The Union's proposal would be stronger if it redefined the cases that would go to expedited arbitration, rather than allow the expedited procedure only in cases of mutual agreement. The Union's proposal also deletes any definition of what an expedited procedure is, leaving it up to the parties to design it on a case by case basis. If adopted, this could create unnecessary disputes.)

The Employer's proposal to allow only the Union to appeal to Step 3 is consistent with industry standards and would generally be viewed favorably by most unions. And the Employer's proposal to set a time limit on commencing selection of an arbitrator serves both parties' interests of moving the issues to completion in a timely manner.

Were it not for the statutory language, the board might select both proposals in this instance. That, however, is not an option. The balance tips toward the Employer's proposal, since it does not have the problematic aspects contained in the Union's proposal, outlined above.

Based in particular on the factor of "internal comparability", the board selects the Employer's last offer on grievance procedure.

Skelly Rights: The current CBA includes a provision for Skelly rights. Each side proposes a single change in this section. The Employer seeks to add the following:

> The employee's representative shall receive a copy of the final notice of discipline.

There was no evidence presented in support of this proposed change. The Union did not object to the addition of this clause.

The Union seeks to add the following language:

> The authority initially imposing the discipline will provide a reasonable period to respond of not less than seven (7) calendar days before issuing any ruling.

There was no evidence presented in support of this proposed change. The Employer stated that the proposal was unnecessary.

Discussion and findings: Given that neither side presented a case in support of its proposed modification to the status quo, the board faces a dilemma. While both proposals appear reasonable and consistent with industry practice, the Employer objected to the Union's proposal as unnecessary, while the Union did not object to the Employer's proposal. Therefore, the board selects the Employer's proposal.

Based in particular on the factor of "internal comparability", the board selects the Employer's last offer on Skelly rights.

AWARD

The arbitration board selects the following last offers of settlement on the issues in dispute:

1. Wages: The Employer's proposal.

2. Health Benefits: The Union's proposal (status quo).

3. Height Work Pay: The Union's proposal.

4. Lead Worker Pay: The Employer's proposal (status quo).

5. Taper Premium: The Union's proposal.

6. Epoxy and Industrial Coatings Premium: The Employer's proposal (status quo).

7. Thermo-Plastic Applicators: The Employer's proposal (status quo).

8. Paperless Pay: The Employer's proposal.

9. Airport Transit Pilot Program: The Union's proposal (status quo).

10. Bargaining Unit Work: The Employer's proposal (status quo).

11. Grievance Procedure: The Employer's proposal.

12. Skelly Rights: The Employer's proposal.

Paul D Roose

Paul D. Roose, Neutral Chairperson of the Arbitration Board

Date: May 13, 2014

Sylvia Courtney, Union-appointed Arbitration Board Member
I dissent from the Arbitration Board's award on issues number 1, 4, 6, 7, 8, 10, 11 and 12.

Emily Prescott, Employer-appointed Arbitration Board Member
I dissent from the Arbitration Board's award on issues number 2, 3, 5 and 9.

5-13-14

Emily Prescott, Employer-appointed Arbitration Board Member
I dissent from the Arbitration Board's award on issues number 2, 3, 5 and 9.

Sylvia Courtney, Union-appointed Arbitration Board Member
I dissent from the Arbitration Board's award on issues number 1, 4, 6, 7, 8, 10, 11 and 12.