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May 7, 2019

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) 2019 Collective Bargaining Impasse
Laborers Local 261)
_____)

Appearances:

For the Employer: Margaret W. Baumgartner, Deputy City Attorney
City and County of San Francisco
1390 Market St. 5th Floor
San Francisco, CA 94102-5408

For the Union: Theresa Foglio, Business Representative
LiUNA! Local 261
3271 18th St.
San Francisco, CA 94110

The Arbitration Board:

Appointed by the Employer: Jennifer Johnston, Deputy City Administrator
City and County of San Francisco

Appointed by the Union: Vince Courtney, Field Representative
LiUNA! Local 261

Neutral Chairperson: Paul D. Roose, Arbitrator and Mediator
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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 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 (CBA) in place that runs through June 30, 2019. During the first few months of 2019, 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 16 and 23 in San Francisco, California. On April 16, the parties made on-the-record opening statements. At the mutual request of the parties, the board then met in off-the-record executive session. The parties continued mediated discussions on disputed issues. Those efforts were successful in reaching agreements on all issues except for one.

The parties were then instructed by the board to submit their final offers of settlement and closing arguments on the remaining disputed issue to the board on April 30, 2019. The matter was thereby submitted for decision.

ISSUE

Which last offer of settlement on the issue of health care premium contributions for active employees most nearly conforms to the factors specified in Section AB.409-4 (d) of the Charter of the City and County of San Francisco?

BACKGROUND

The City and County of San Francisco is the fourth largest city in California, with a population of 884,000. It is the second-most densely populated major city in the United States. It is also a world-renowned tourist destination, a primary financial and technology 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 in that 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 Zuckerberg San Francisco General Hospital and Trauma Center. The City employs approximately 30,000 individuals.

The laborers City bargaining unit consists of approximately 1,100 employees in over thirty classifications. The exclusive representative, Laborers Local 261, is primarily a private sector union with over 4,200 members. The City classifications range from relatively lower-paid employees in the general laborer classification to more highly-compensated employees in technician and supervisory classes.

The existing ratified collective bargaining agreement has a term of July 1, 2017 through June 30, 2019. It was negotiated as part of a citywide “rollover” in 2017 of most of the city’s contracts with changes only in basic pay and benefit provisions. This bargaining cycle is the first one in five years in which the parties attempted to address a myriad of rights, special compensation, and relationship issues. It is a testament to the skill and determination of individuals on both sides of the table that all issues were resolved except for health benefits.

The Employer is also in bargaining with many 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.

APPLICATION OF THE STATUTORY CRITERIA

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 the remaining disputed issue. Some of the criteria were more relevant than others, and the findings will so note.

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.

The neutral board chairperson holds to the general view that 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 1,100 members in a workforce of over 30,000. Given the fact that the parties have agreed on an overall wage package, these financial factors diminish even further. However, financial factors have continuing relevance, as noted below.

THE ISSUE IN DISPUTE: HEALTH BENEFIT PREMIUM CONTRIBUTIONS

The parties have a current agreement to provide health benefits to bargaining unit members through the City Health Services System (CHSS). CHSS currently offers four health plans to employees:

Kaiser Permanente, Blue Shield Trio, Blue Shield Access +, and the City Plan. The CBA provides that the City will contribute the following percentage of the premiums for these plans:

- Employee Only: 93%
- Employee Plus One: 93%
- Employee Plus Two or More: 83%

The employee must contribute the remainder of the premium. The employer contribution is capped at the percentage of the second-highest plan premium. Under the current plan configuration, this cap results in the City contributing at the Blue Shield Access rate for the highest-priced City Plan enrollees.

In addition to the above percentage contributions, the current CBA provided for additional stipends for employee-only and employee-plus-one enrollees. For calendar years 2015 and 2016, the City contributed \$25 per month for employee-only enrollees and \$50 per month for employee-plus-one enrollees. The CBA provided for a similar stipend for the first six months of 2017.

70% of enrolled Laborers bargaining unit members¹ are Kaiser subscribers. For Kaiser enrollees, this agreement currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

- Employee Only: \$19
- Employee Plus One: \$39
- Employee Plus Two or More: \$135

14% of enrolled Laborers bargaining unit members are Blue Shield Trio subscribers. For these enrollees, the CBA currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

- Employee Only: \$24
- Employee Plus One: \$48
- Employee Plus Two or More: \$165

¹ Information provided by the Employer listed the number in the bargaining unit as 1151. However, data also showed only 1,008 unit members enrolled in health plans. The undersigned neutral assumes that the difference between the two numbers is accounted for by employees not eligible for benefits and by those who chose not to enroll in a health plan.

14% of enrolled Laborers bargaining unit members are Blue Shield Access + subscribers. For these enrollees, the CBA currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

- Employee Only: \$28
- Employee Plus One: \$56
- Employee Plus Two or More: \$193

The remainder of unit members (.1 per cent) are in the City Plan. For these enrollees, the CBA currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

- Employee Only: \$122
- Employee Plus One: \$214
- Employee Plus Two or More: \$408

The great majority of the City's bargaining units have CBAs with this same provision for active employee health benefits. The notable and relevant exception is the employer's contract with its largest union, SEIU Local 1021. That CBA contains an additional health benefit provision that provides for a more favorable City contribution for employees earning below a threshold rate of pay.

According to City data, 29.5% of Laborers bargaining unit members are paid at or below the threshold level (\$61,738 annually) identified in the SEIU agreement and in the Employer's proposal.

The City's health benefit premiums are reset each calendar year, with corresponding changes made to city and employee contribution levels. After the rates for the upcoming year are published, employees are provided an opportunity to change their health plan during an open enrollment period.

Both parties are proposing to modify the agreement on health benefits with changes going into effect on January 1, 2020. Those proposals, and the arguments made in their favor and against the other party's proposal, are recited in the following sections.

EMPLOYER'S FINAL OFFER OF SETTLEMENT

The Employer proposes to maintain the existing health benefits agreement for bargaining unit members earning \$29.68 per hour (approximately \$61,000 per year) or more (the so-called 93/93/83 plan). However, effective calendar year 2020, the City proposes to establish a higher city premium contribution rate for employees earning less than that amount. The proposed City contributions for these lower-paid workers are as follows:

- Employee Only: 100%

Employee Plus One: 96%

Employee Plus Two or More: 88%

Under this lower-wage employee proposal, the reference to payments capped at the level of the second-highest plans are omitted. The threshold wage level is increased in January 2021 and January 2022 to reflect any increase in the consumer price index during the prior year.

The City characterizes its proposal as “good policy” that “serves the City’s mission” and places the lower-paid workers in the Laborers bargaining unit on a par with their SEIU-represented counterparts. The City states that an arbitrator awarded this lower-paid worker benefit to the SEIU in 2014. The City has offered it only to the Laborers in this bargaining round, and not to other unions, because of the large number of lower-paid employees in the unit.

The City also notes that no other City bargaining unit has the higher employee-plus-two city health benefit contribution proposed by Local 261. The City argues that the Union has not provided any information that a comparable benefit is enjoyed by other employees performing similar duties in comparable jurisdictions.

The City argues that it has reached a generous overall economic settlement with Local 261 that includes pay increases over the three-year contract totaling 11% (above the expected rate of increase in the consumer price index). In addition, the cost of maintaining the existing health benefit and pension agreement with the Local is projected to cost the City an additional 1.42%. While the City is in sound financial condition, the City has other non-compensation pressing priorities and must hedge against the possibility of a recession in coming months and years.

The City estimates that the cost of its health benefit proposal is \$117,000 per year. The City estimates that the cost of the Union’s proposal is \$299,000 per year. The difference between the two proposals is \$181,000 annually.

The City calculates the cost of a 1% pay increase for the Laborers bargaining unit at \$1,129,000. Therefore, the Union’s proposal costs .16% more than the City’s proposal.²

UNION’S FINAL OFFER OF SETTLEMENT

The Union proposes a “pilot program” to modify the employee-plus-two health benefit contribution rate. The pilot program sunsets on the last day of the agreement – June 30, 2022.

² It was not clear from the evidence submitted to the arbitration board whether the City costing analysis included the portions of both proposals that removed the “second-highest plan” cap. The board chairperson assumes that the costing was included or not considered due to the small number of individuals enrolled in the City Plan.

The primary proposed change is to increase the City’s contribution for the employee-plus-two category from 83% of the premium to 88% of the premium. This change would go into effect on January 1, 2020.

In addition, the Union’s proposal removes the existing contribution cap for employee-only enrollees. Currently, that rate is capped at the second-highest health plan premium rate. Under the Union’s proposal, the City would pay 93% of the premium regardless of the plan selected by the employee. Under the Union’s pilot program proposal, the cap is retained for employee-plus-one and employee-plus-two.

Under the Union’s proposal, at current premium levels the employee bi-weekly contribution for employee-plus-two would decrease as per the following chart:

Plan Name	Number of Current Enrollees	Current Bi-Weekly Employee Contribution	Proposed Bi-Weekly Employee Contribution	Difference
Kaiser	209	\$135	\$95	(\$40)
Blue Shield Trio	26	\$165	\$116	(\$49)
Blue Shield Access +	30	\$193	\$136	(\$57)
City Plan	4	\$408	\$351	(\$57)

The Union argues that its proposal addresses the “particularly high health insurance costs that employees with families face, especially those that live in San Francisco.” The Union notes that the City “provides financial relief” to the members of SEIU Local 1021 who, like those represented by Laborers Local 261, are among the lowest-paid City workers.

The Union also submits in support of its proposal reports and forecasts on the “financial health” of the City and asserts that the City “has the ability to pay” for the Union’s proposal.

DISCUSSION AND FINDINGS

Internal Comparators Lean in the Direction of the City's Offer but Are Mitigated by Other

Factors: Both parties are venturing into relatively uncharted waters with these two proposals. The City's proposal does mirror the CBA in the City's largest bargaining unit, SEIU Local 1021. However, the City acknowledged that the SEIU arrangement was ordered by an interest arbitrator in 2014, presumably against the wishes of the Employer. It is a stretch for the Employer to assert an internal pattern when the only evidence of a pattern is an arbitrator-ordered provision in one contract.

The City also argues that no other City bargaining unit has the provision being proposed by the Union. The Union has made no effort to rebut this assertion, so the board takes this as fact. However, no evidence was presented that any other Union proposed an increase in the City's employee-plus-two contribution rate and was turned away by the Employer.

Even had such evidence come to light, both parties have convinced the board that this Laborers bargaining unit is exceptional within the full universe of City bargaining units. Like only one other unit, SEIU Local 1021, the Laborers unit includes a substantial group of lower-paid employees. The internal comparison of the Laborers unit with other City units erodes in the light of this distinction. This unique unit might be a candidate for a special solution on health benefit contributions.

The Union's Offer Most Closely Conforms with the Pattern of the Parties' Prior

Agreements: The undersigned chairperson favors a cautious approach to the use of power ceded to the arbitration board by the Charter. The parties have successfully negotiated many CBAs over the years without recourse to an arbitrator's dictums. Where possible, it is best for the arbitrator to leave relatively undisturbed the work of prior bargaining teams.

In the instant case, the parties have historically negotiated three tiers of employer contribution rates. The percentage contributed by the Employer (and by extension the employee) has varied between the three tiers: employee-only, employee-plus-one, and employee-plus-two. Evidence is in the record that the parties mutually agreed to modify those contribution percentages in 2014.

No evidence was before the panel that the parties have ever agreed on, or even proposed, health benefit contribution rates that vary by employee wage rate. Such a system has potential as an innovative approach to leveling the health benefit playing field for employees in widely varying pay bands.

The undersigned neutral strongly believes that such innovation holds an important place in collective bargaining. However, it is far better for the parties themselves to reach path-breaking

agreements than to have them imposed by an arbitrator. Particularly in this instance, as one side proposes to pro-rate benefits in a way that advantages some unit members and disadvantages others, it is critical that the parties reach agreement.

The Union's proposal is, in that sense, more in the mainstream of earlier agreements negotiated by the parties. It makes an incremental adjustment to prior agreements. In accord with the Charter factors, the undersigned neutral chairperson holds the view that bargaining continuity is a "factor traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of employment."

The Union's proposal uses relatively little funding to make a large impact on unit members with two or more healthcare dependents. A worker at the lower-paid threshold of \$61,000 annual salary with Kaiser family coverage would save \$1,040 per year, the equivalent of an increase in take-home pay of 1.7%. An employee with the same Kaiser family coverage making \$100,000 per year would enjoy a 1% increase in take-home pay.

The Union's proposal also helps to correct what might be perceived as an imbalance between the Employer's recent historic contributions to employee-only and employee-plus-one tiers and its contribution to employee-plus-two enrollees. Since 2014, the first two categories have received a greater percentage City contribution. In addition, those same categories received additional City-paid stipends in three of the years since 2014. Employee-plus-two enrollees received no stipends.

While the Union's Offer is More Expensive Over the Life of the Agreement, It Commits the City to One-Time Rather Than Ongoing Costs: The board carefully considered the arguments of both parties about the cost of the competing proposals. While the City was not claiming an inability to pay, it properly and convincingly asserted that the City has important spending priorities that must not be jeopardized by excessive labor agreements. The 2019 wage settlement is, indeed, a robust one with a total increase exceeding projected CPI increases.

Two factors soften the impact of the Union's proposal and remove cost as a dispositive factor. One, the annual increment between the City and Union's proposal is relatively small. It adds up to .16% of the Laborers bargaining unit's compensation costs.

Of greater significance for the decision of the board is the fact that the Union's proposal has a sunset date and the Employer's proposal is ongoing. The importance of the sunset date is that the enhanced benefit percentage for employee-plus-two enrollees expires at the end of this agreement. The

parties, of course, could agree to extend that agreement at that time. Or an arbitrator could order it. But, by today's arbitration order, the City is not required to continue the 88% contribution rate beyond June 30, 2022.

Given that it is a pilot program, the neutral way to cost this provision is as a one-time enhancement for two and a half years (January 1, 2020 through June 30, 2022). As the Union's proposed contract language states, the pilot program will allow the Health Service System time to "evaluate the effect of a higher employer contribution for the category of employee plus 2." Presumably, such evaluation will include an analysis of plan selection to determine if the new contribution rate incentivizes bargaining unit members to change plans or categories.

The City's proposal, on the other hand, has no expiration date. It is presumptively ongoing into the years beyond the expiration of this agreement. The appropriate way to cost the City's proposal is as an ongoing expense built into the base cost of the agreement.

Viewing the two proposals in this light leads the undersigned arbitrator to conclude that the true costs of the proposals converge over time. An already small difference, relative to the cost of compensation for the Laborers bargaining unit, becomes even smaller.

No External Comparators Were Presented by Either Party: On a health benefit issue such as this one, comparison with health benefits in other comparable jurisdictions might also be a relevant factor under the charter. Neither party presented external reinforcement for its proposal. The board has reached no conclusion on external comparability.

Both Proposals Are Worthy – The Union's Best Conforms to the Statutory Factors: The board is in the enviable position of having two excellent competing proposals to choose from. Given the "baseball style" rule of the Charter that the board chooses one proposal or the other, no compromise imposed by the arbitration board is allowable at this juncture. Either proposal, standing alone, has strong support from the Charter factors.

The board selects the Union's proposal for the reasons outlined above. While the City's proposal is somewhat less costly, both add cost to the compensation package. And the gap between the costs diminishes when the "pilot program" aspect of the Union's proposal is factored in.

The City's proposal has some reinforcement from internal comparison with the SEIU unit. But this connection is undermined by the fact that the similar arrangement with the SEIU unit was ordered by an interest arbitrator. It was not a product of mutual agreement.

The Employer proposal, while well-intentioned and creative, seeks to impose a salary-based health benefit premium contribution arrangement on the parties. In future negotiations, the parties may want to revisit the issue of health benefit contributions pegged to salary levels. The board is reluctant to order such an outcome.

The dispositive factor for the board is the continuity of labor agreements, a factor “traditionally taken into consideration” in collective bargaining. The board has before it a well-crafted and well-reasoned Union proposal that builds from the current agreement. Overall, the Union’s proposal more closely conforms to the Charter factors.

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BACKGROUND

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- 2) “the wages, hours, benefits and terms and conditions of employment of employees performing similar services”: **external comparability**
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- 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**
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THE ISSUE IN DISPUTE: HEALTH BENEFIT PREMIUM CONTRIBUTIONS

The parties have a current agreement to provide health benefits to bargaining unit members through the City Health Services System (CHSS). CHSS currently offers four health plans to employees:

Kaiser Permanente, Blue Shield Trio, Blue Shield Access +, and the City Plan. The CBA provides that the City will contribute the following percentage of the premiums for these plans:

Employee Only: 93%

Employee Plus One: 93%

Employee Plus Two or More: 83%

The employee must contribute the remainder of the premium. The employer contribution is capped at the percentage of the second-highest plan premium. Under the current plan configuration, this cap results in the City contributing at the Blue Shield Access rate for the highest-priced City Plan enrollees.

In addition to the above percentage contributions, the current CBA provided for additional stipends for employee-only and employee-plus-one enrollees. For calendar years 2015 and 2016, the City contributed \$25 per month for employee-only enrollees and \$50 per month for employee-plus-one enrollees. The CBA provided for a similar stipend for the first six months of 2017.

70% of enrolled Laborers bargaining unit members¹ are Kaiser subscribers. For Kaiser enrollees, this agreement currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

Employee Only: \$19

Employee Plus One: \$39

Employee Plus Two or More: \$135

14% of enrolled Laborers bargaining unit members are Blue Shield Trio subscribers. For these enrollees, the CBA currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

Employee Only: \$24

Employee Plus One: \$48

Employee Plus Two or More: \$165

¹ Information provided by the Employer listed the number in the bargaining unit as 1151. However, data also showed only 1,008 unit members enrolled in health plans. The undersigned neutral assumes that the difference between the two numbers is accounted for by employees not eligible for benefits and by those who chose not to enroll in a health plan.

14% of enrolled Laborers bargaining unit members are Blue Shield Access + subscribers. For these enrollees, the CBA currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

- Employee Only: \$28
- Employee Plus One: \$56
- Employee Plus Two or More: \$193

The remainder of unit members (.1 per cent) are in the City Plan. For these enrollees, the CBA currently results in employee bi-weekly contributions (omitting cents) of the following amounts:

- Employee Only: \$122
- Employee Plus One: \$214
- Employee Plus Two or More: \$408

The great majority of the City's bargaining units have CBAs with this same provision for active employee health benefits. The notable and relevant exception is the employer's contract with its largest union, SEIU Local 1021. That CBA contains an additional health benefit provision that provides for a more favorable City contribution for employees earning below a threshold rate of pay.

According to City data, 29.5% of Laborers bargaining unit members are paid at or below the threshold level (\$61,738 annually) identified in the SEIU agreement and in the Employer's proposal.

The City's health benefit premiums are reset each calendar year, with corresponding changes made to city and employee contribution levels. After the rates for the upcoming year are published, employees are provided an opportunity to change their health plan during an open enrollment period.

Both parties are proposing to modify the agreement on health benefits with changes going into effect on January 1, 2020. Those proposals, and the arguments made in their favor and against the other party's proposal, are recited in the following sections.

EMPLOYER'S FINAL OFFER OF SETTLEMENT

The Employer proposes to maintain the existing health benefits agreement for bargaining unit members earning \$29.68 per hour (approximately \$61,000 per year) or more (the so-called 93/93/83 plan). However, effective calendar year 2020, the City proposes to establish a higher city premium contribution rate for employees earning less than that amount. The proposed City contributions for these lower-paid workers are as follows:

- Employee Only: 100%

Employee Plus One: 96%

Employee Plus Two or More: 88%

Under this lower-wage employee proposal, the reference to payments capped at the level of the second-highest plans are omitted. The threshold wage level is increased in January 2021 and January 2022 to reflect any increase in the consumer price index during the prior year.

The City characterizes its proposal as “good policy” that “serves the City’s mission” and places the lower-paid workers in the Laborers bargaining unit on a par with their SEIU-represented counterparts. The City states that an arbitrator awarded this lower-paid worker benefit to the SEIU in 2014. The City has offered it only to the Laborers in this bargaining round, and not to other unions, because of the large number of lower-paid employees in the unit.

The City also notes that no other City bargaining unit has the higher employee-plus-two city health benefit contribution proposed by Local 261. The City argues that the Union has not provided any information that a comparable benefit is enjoyed by other employees performing similar duties in comparable jurisdictions.

The City argues that it has reached a generous overall economic settlement with Local 261 that includes pay increases over the three-year contract totaling 11% (above the expected rate of increase in the consumer price index). In addition, the cost of maintaining the existing health benefit and pension agreement with the Local is projected to cost the City an additional 1.42%. While the City is in sound financial condition, the City has other non-compensation pressing priorities and must hedge against the possibility of a recession in coming months and years.

The City estimates that the cost of its health benefit proposal is \$117,000 per year. The City estimates that the cost of the Union’s proposal is \$299,000 per year. The difference between the two proposals is \$181,000 annually.

The City calculates the cost of a 1% pay increase for the Laborers bargaining unit at \$1,129,000. Therefore, the Union’s proposal costs .16% more than the City’s proposal.²

UNION’S FINAL OFFER OF SETTLEMENT

The Union proposes a “pilot program” to modify the employee-plus-two health benefit contribution rate. The pilot program sunsets on the last day of the agreement – June 30, 2022.

² It was not clear from the evidence submitted to the arbitration board whether the City costing analysis included the portions of both proposals that removed the “second-highest plan” cap. The board chairperson assumes that the costing was included or not considered due to the small number of individuals enrolled in the City Plan.

The primary proposed change is to increase the City’s contribution for the employee-plus-two category from 83% of the premium to 88% of the premium. This change would go into effect on January 1, 2020.

In addition, the Union’s proposal removes the existing contribution cap for employee-only enrollees. Currently, that rate is capped at the second-highest health plan premium rate. Under the Union’s proposal, the City would pay 93% of the premium regardless of the plan selected by the employee. Under the Union’s pilot program proposal, the cap is retained for employee-plus-one and employee-plus-two.

Under the Union’s proposal, at current premium levels the employee bi-weekly contribution for employee-plus-two would decrease as per the following chart:

Plan Name	Number of Current Enrollees	Current Bi-Weekly Employee Contribution	Proposed Bi-Weekly Employee Contribution	Difference
Kaiser	209	\$135	\$95	(\$40)
Blue Shield Trio	26	\$165	\$116	(\$49)
Blue Shield Access +	30	\$193	\$136	(\$57)
City Plan	4	\$408	\$351	(\$57)

The Union argues that its proposal addresses the “particularly high health insurance costs that employees with families face, especially those that live in San Francisco.” The Union notes that the City “provides financial relief” to the members of SEIU Local 1021 who, like those represented by Laborers Local 261, are among the lowest-paid City workers.

The Union also submits in support of its proposal reports and forecasts on the “financial health” of the City and asserts that the City “has the ability to pay” for the Union’s proposal.

DISCUSSION AND FINDINGS

Internal Comparators Lean in the Direction of the City's Offer but Are Mitigated by Other Factors: Both parties are venturing into relatively uncharted waters with these two proposals. The City's proposal does mirror the CBA in the City's largest bargaining unit, SEIU Local 1021. However, the City acknowledged that the SEIU arrangement was ordered by an interest arbitrator in 2014, presumably against the wishes of the Employer. It is a stretch for the Employer to assert an internal pattern when the only evidence of a pattern is an arbitrator-ordered provision in one contract.

The City also argues that no other City bargaining unit has the provision being proposed by the Union. The Union has made no effort to rebut this assertion, so the board takes this as fact. However, no evidence was presented that any other Union proposed an increase in the City's employee-plus-two contribution rate and was turned away by the Employer.

Even had such evidence come to light, both parties have convinced the board that this Laborers bargaining unit is exceptional within the full universe of City bargaining units. Like only one other unit, SEIU Local 1021, the Laborers unit includes a substantial group of lower-paid employees. The internal comparison of the Laborers unit with other City units erodes in the light of this distinction. This unique unit might be a candidate for a special solution on health benefit contributions.

The Union's Offer Most Closely Conforms with the Pattern of the Parties' Prior Agreements: The undersigned chairperson favors a cautious approach to the use of power ceded to the arbitration board by the Charter. The parties have successfully negotiated many CBAs over the years without recourse to an arbitrator's dictums. Where possible, it is best for the arbitrator to leave relatively undisturbed the work of prior bargaining teams.

In the instant case, the parties have historically negotiated three tiers of employer contribution rates. The percentage contributed by the Employer (and by extension the employee) has varied between the three tiers: employee-only, employee-plus-one, and employee-plus-two. Evidence is in the record that the parties mutually agreed to modify those contribution percentages in 2014.

No evidence was before the panel that the parties have ever agreed on, or even proposed, health benefit contribution rates that vary by employee wage rate. Such a system has potential as an innovative approach to leveling the health benefit playing field for employees in widely varying pay bands.

The undersigned neutral strongly believes that such innovation holds an important place in collective bargaining. However, it is far better for the parties themselves to reach path-breaking

agreements than to have them imposed by an arbitrator. Particularly in this instance, as one side proposes to pro-rate benefits in a way that advantages some unit members and disadvantages others, it is critical that the parties reach agreement.

The Union's proposal is, in that sense, more in the mainstream of earlier agreements negotiated by the parties. It makes an incremental adjustment to prior agreements. In accord with the Charter factors, the undersigned neutral chairperson holds the view that bargaining continuity is a "factor traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of employment."

The Union's proposal uses relatively little funding to make a large impact on unit members with two or more healthcare dependents. A worker at the lower-paid threshold of \$61,000 annual salary with Kaiser family coverage would save \$1,040 per year, the equivalent of an increase in take-home pay of 1.7%. An employee with the same Kaiser family coverage making \$100,000 per year would enjoy a 1% increase in take-home pay.

The Union's proposal also helps to correct what might be perceived as an imbalance between the Employer's recent historic contributions to employee-only and employee-plus-one tiers and its contribution to employee-plus-two enrollees. Since 2014, the first two categories have received a greater percentage City contribution. In addition, those same categories received additional City-paid stipends in three of the years since 2014. Employee-plus-two enrollees received no stipends.

While the Union's Offer is More Expensive Over the Life of the Agreement, It Commits the City to One-Time Rather Than Ongoing Costs: The board carefully considered the arguments of both parties about the cost of the competing proposals. While the City was not claiming an inability to pay, it properly and convincingly asserted that the City has important spending priorities that must not be jeopardized by excessive labor agreements. The 2019 wage settlement is, indeed, a robust one with a total increase exceeding projected CPI increases.

Two factors soften the impact of the Union's proposal and remove cost as a dispositive factor. One, the annual increment between the City and Union's proposal is relatively small. It adds up to .16% of the Laborers bargaining unit's compensation costs.

Of greater significance for the decision of the board is the fact that the Union's proposal has a sunset date and the Employer's proposal is ongoing. The importance of the sunset date is that the enhanced benefit percentage for employee-plus-two enrollees expires at the end of this agreement. The

parties, of course, could agree to extend that agreement at that time. Or an arbitrator could order it. But, by today's arbitration order, the City is not required to continue the 88% contribution rate beyond June 30, 2022.

Given that it is a pilot program, the neutral way to cost this provision is as a one-time enhancement for two and a half years (January 1, 2020 through June 30, 2022). As the Union's proposed contract language states, the pilot program will allow the Health Service System time to "evaluate the effect of a higher employer contribution for the category of employee plus 2." Presumably, such evaluation will include an analysis of plan selection to determine if the new contribution rate incentivizes bargaining unit members to change plans or categories.

The City's proposal, on the other hand, has no expiration date. It is presumptively ongoing into the years beyond the expiration of this agreement. The appropriate way to cost the City's proposal is as an ongoing expense built into the base cost of the agreement.

Viewing the two proposals in this light leads the undersigned arbitrator to conclude that the true costs of the proposals converge over time. An already small difference, relative to the cost of compensation for the Laborers bargaining unit, becomes even smaller.

No External Comparators Were Presented by Either Party: On a health benefit issue such as this one, comparison with health benefits in other comparable jurisdictions might also be a relevant factor under the charter. Neither party presented external reinforcement for its proposal. The board has reached no conclusion on external comparability.

Both Proposals Are Worthy – The Union's Best Conforms to the Statutory Factors: The board is in the enviable position of having two excellent competing proposals to choose from. Given the "baseball style" rule of the Charter that the board chooses one proposal or the other, no compromise imposed by the arbitration board is allowable at this juncture. Either proposal, standing alone, has strong support from the Charter factors.

The board selects the Union's proposal for the reasons outlined above. While the City's proposal is somewhat less costly, both add cost to the compensation package. And the gap between the costs diminishes when the "pilot program" aspect of the Union's proposal is factored in.

The City's proposal has some reinforcement from internal comparison with the SEIU unit. But this connection is undermined by the fact that the similar arrangement with the SEIU unit was ordered by an interest arbitrator. It was not a product of mutual agreement.

The Employer proposal, while well-intentioned and creative, seeks to impose a salary-based health benefit premium contribution arrangement on the parties. In future negotiations, the parties may want to revisit the issue of health benefit contributions pegged to salary levels. The board is reluctant to order such an outcome.

The dispositive factor for the board is the continuity of labor agreements, a factor “traditionally taken into consideration” in collective bargaining. The board has before it a well-crafted and well-reasoned Union proposal that builds from the current agreement. Overall, the Union’s proposal more closely conforms to the Charter factors.

AWARD

The arbitration board selects the Union's last offer of settlement on health benefit premium contributions for active employees.



Paul D. Roose, Neutral Chairperson of the Arbitration Board

Date: May 7, 2019



Vince Courtney, Union-appointed Arbitration Board Member

I concur with the Arbitration Board's award.



Jennifer Johnston, Employer-appointed Arbitration Board Member

I dissent from the Arbitration Board's award.