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**IN ARBITRATION PROCEEDINGS
PURSUANT TO SAN FRANCISCO CHARTER SEC. A8.590-5**

In the Matter of Interest Arbitration,

**CITY AND COUNTY OF SAN
FRANCISCO**, Employer,

v.

**SAN FRANCISCO DEPUTY SHERIFFS'
ASSOCIATION**, Employee Organization.

OPINION AND AWARD

May 13, 2019

ARBITRATION PANEL

Katherine Thomson, Chair
Michael Jarvis, Deputy Sheriffs' Association Panelist
Melissa Whitehouse, City and County of San Francisco Panelist

APPEARANCES

For the City and County of San Francisco:

Jennifer Stoughton
Deputy City Attorney
1390 Market Street, 5th Floor
San Francisco, CA 94102

For San Francisco Deputy Sheriffs' Association:

David Mastagni
Mastagni Holstedt
1912 I St
Sacramento, CA 95811

The parties to this matter are the City and County of San Francisco (“City” or “CCSF”) and the San Francisco Deputy Sheriffs’ Association (“Union” or “DSA”). DSA represents approximately 700 deputy sheriffs and senior deputy sheriffs in the Sheriff’s Department.

This proceeding was convened pursuant to Section A8.590-5 of the Charter of the City and County of San Francisco. The parties met and conferred in an attempt to reach agreement regarding a successor memorandum of understanding (“MOU”) on multiple occasions in February, March, and April 2019. Although they reached tentative agreements on several issues, they were unable to reach agreement on wages and many other issues. The parties engaged in the mediation/arbitration process consistent with Section A8.590-5(c) on April 23, 24, 25, 30 and May 1, 2019.

The Arbitrator grants the City’s Request for Arbitral Notice filed May 9, 2019.

TENTATIVE AGREEMENTS AND ISSUES IN DISPUTE

The parties reached the following tentative agreements, which the Board finds warranted by Charter factors and incorporates into this award:

- | | |
|--------------------------------------|-----------------------------------|
| • Americans with Disabilities Act | • Modified Duty |
| • Use of Sick Leave with Pay Credits | • Volunteer/Parental Release Time |
| • Union Security | • Acting Assignment Pay |
| • Non-Discrimination | • Acting Watch Commander Pay |
| • Layoffs | • NO Strike Provision |
| • Gender Pronoun | • Shift Differential |
| • Stewards | • Canine Pay |
| • Probationary Period | • Training Officers |
| • Assignment of Work | • 8302 Package |
| • Intent | • Retirement |
| • SDI | • Longevity Pay |
| • Law Enforcement Services Committee | • Assignment of Work |
| • Call Back Pay | • Negotiation Responsibility |
| • Honor-Color Guard | • Employee Representatives |
| • Emergency Services Unit | • Management Rights |
| • Health and Welfare | • Vacation |
| • Bulletin Boards | • 12-hour Shifts |
| • Bilingual Premium | • Grievance Procedure |
| • Union Access | • Wages |
| • Paperless Pay Policy | • CalPERS Underpayment |
| • Tuition Reimbursement | |

On May 7, 2019, the parties submitted last, best and final offers. The remaining issues are:

A. DSA Proposals:

1. POST Premium
2. Uniforms

B. City Proposals:

1. Zipper Clause

Charter Section A8.590-5(d) requires the arbitration board to determine each issue by selecting the last best offer that most nearly conforms to “those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment,” including but not limited to:

- changes in the average consumer price index for goods and services
- compensation and terms and conditions of employees performing similar services
- compensation and terms and conditions of other CCSF employees
- formulas provided in the Charter for the establishment and maintenance of compensation and terms and condition of employment
- financial condition of the City
- the City’s ability to meet the costs of the decision of the Arbitration Board

Not all factors are relevant to every issue. The relevant factors and their relative weight are discussed with respect to each issue below.

Note: Throughout its proposals, DSA proposes changing the current term “bargaining unit member(s)” to “employee(s).” The Arbitration Board will not discuss this aspect of the proposals in each instance.

ISSUE 1: POST PREMIUM

DSA proposes that Paragraph 155 be amended as follows:

155. ~~Bargaining unit members~~Employees who possess an intermediate POST certificate shall, upon presenting documentation to the Department, receive an additional premium of four percent (4.0%) ~~percent~~ of their base rate of pay. ~~Professional achievement pay shall be paid commencing with the first pay period following said presentation.~~ Employees who possess an advanced POST certificate shall, upon presentation to the Department, receive an additional premium of six seven and a half percent (6.07.5%) ~~percent~~ of their base rate of pay. POST premium

shall be paid commencing with the first pay period following said presentation. The maximum POST premium shall be seven and a half percent (7.5%). Deputies hired prior to 1975 shall be entitled to receive either premium if (s)he has met the equivalent standard for either certificate. This payment shall not be considered "regular" pay for purposes of overtime.

The City opposes any language changes and counters with an increase to the advanced POST premium from 6% to 6.5 % of the base rate of pay.

Relevant Charter factors include internal and external comparability, the City's financial condition, and its ability to meet the costs of the arbitration award.

DSA argues that the City's last MOU with the POA increased premiums paid to officers who have obtained intermediate and advanced Peace Officer Standards and Training (POST) certificates by 2%. A 1.5% increase would reward longer-term employees who have advanced training.

The City is offering a 6.5% premium for advanced POST certificates to this unit, which it based on the average of POST premiums for sheriff's deputies in the comparator agencies, which is 6.18% (City Exhibit 25) The interest arbitration award for the CCSF-POA MOU explained that the POST premium increase for POA was necessary because the POA total compensation for longer-term officers was not comparable to that in comparator agencies. (DSA Ex. 77) Importantly, the MOU of the Sheriff's Managers and Supervisors Association, which represents the unit of Sergeants, Lieutenants and Captains, does not provide a 7.5% POST premium. If the DSA proposal were accepted, it would effectively cause compaction of compensation among the ranks in the Sheriff's Department.

The City's recent revenues have been sufficiently strong that the City shows increasing ending fund balances over the last several years and has large reserves. While the revenues are projected to remain strong for the short term, employee costs — as well as other expenditures — are increasing faster than revenues. There is a growing need for social services for the homeless and to administer services, such as In-Home Supportive Services, that the state performed but that recently have been "realigned" to local governments. Thus, while the revenue side of the picture is very positive and projected to expand, the City's expenditures on current policies and programs will lead to deficit spending if expenditures are not sufficiently constrained.

The City has already agreed to base wage increases of 3% on July 1, 2019, and an

additional 1% on December 28, 2019. Subject to certain contingencies, this unit will receive raises of 3% in July 2020, .5% in December 2020, 3% in July 2021, and .5% in January 2022. These increases are higher than the average of projections of the California Department of Finance and Moody's San Francisco Metropolitan Statistical Area CPI. Those projections are 2.97% in 2019-20, and 2.79% and 2.94% in the following years. Since approximately 51% of the unit has the advanced POST certificate, the Union's proposal would cost the City an additional \$566,705 more than the City's proposal each year. (See CXs 4, 14)

In sum, external and internal comparability factors, as well as consideration of the City's financial projections, the new wage agreement, and other demands for use of City revenues, weigh against the DSA's proposal.

The Board finds that DSA's proposal is not warranted by Charter factors.

ISSUE 2: UNIFORMS AND EQUIPMENT

DSA proposes changing the language in Article IV.A. as follows:

281. 1. Uniform Allowance. Employees shall receive forty-two dollars, thirty cents (\$42.30) per pay period for the purchase and maintenance of uniforms. The City agrees to provide a sum of Nine Hundred and Fifty (\$950) dollars in the payroll that includes September 1 as a uniform allowance to represented employees who have been continuously employed in the Sheriff's Department. An employee shall be considered "continuously employed" if he/she was on duty status cumulatively for ten (10) of the twelve (12) months immediately preceding September 1 each year of this contract. Employees who were on duty status less than ten (10) of the twelve (12) months shall be paid a pro rata uniform allowance, calculated on a twelve (12) month basis. However, to receive this allowance, an employee must be in paid status or on approved leave on September 1. If an employee is not on duty status or on approved leave on September 1, the employee will not receive any allowance. Any eligible employee hired on or after March 1 will receive fifty percent (50%) of the uniform allowance that year.
282. 2. BulletproofBallistic Vests. The City agrees to shall refurbish, repair or replace bulletproof vestsballistic vests for each represented employee. The City shall provide employee's voucher for a replacement vest ninety-days (90) months prior to the manufacture's expiration date, as appropriate and in accordance with manufacturer's specifications. All bBulletproofBallistic vests provided to employees remain the property of the City and must be returned to the City when an employee is issued a replacement vest.

The City counters with language in Paragraphs 281 and 282 as follows:

281. 1. Uniform Allowance. The City agrees to provide a sum of ~~Nine Hundred and Fifty (\$950)~~ One Thousand dollars (\$1,000) in the payroll that includes September 1 as a uniform allowance to represented employees who have been continuously employed in the Sheriff's Department. An employee shall be considered "continuously employed" if he/she was on duty status cumulatively for ten (10) of the twelve (12) months immediately preceding September 1 each year of this contract. Employees who were on duty status less than ten (10) of the twelve (12) months shall be paid a pro-rata uniform allowance, calculated on a twelve (12) month basis. However, to receive this allowance, an employee must be in paid status or on approved leave on September 1. If an employee is not on duty status or on approved leave on September 1, the employee will not receive any allowance. Any eligible employee hired on or after March 1 will receive fifty percent (50%) of the uniform allowance that year.
282. 2. ~~Bulletproof~~ Ballistic Vests. The City ~~agrees to~~ shall refurbish, repair or replace ~~bulletproof ballistic~~ vests for each represented employee, ~~as appropriate and in accordance with manufacturer's specifications. An employee may request a replacement vest three (3) months before the manufacturer's expiration date and the City will provide a voucher for a replacement vest before that date. All~~ bulletproof Ballistic vests provided to employees remain the property of the City and must be returned to the City when an employee is issued a replacement vest.

Relevant Charter factors include the City's financial condition, its ability to meet the costs of the arbitration award, and internal and external comparability.

The City argues that the unit's uniform allowance is higher than the average paid by comparator agencies, which is \$760 per year. (City Ex. 26) However, Deputy Jason Moore testified that the recurring annual costs for deputies to purchase and maintain their uniforms is approximately \$1,400. This does not include purchases of duty belts, rain gear, and Class B uniforms that deputies replace every several years. In addition, the City provides the POA unit with a uniform allowance of \$1,100. (City Ex. 9, p. 38) The difference in cost between the two offers is \$72,555 annually. The City can afford to increase this allowance to cover deputies' out-of-pocket costs.

The Board finds that DSA's proposal is warranted by internal comparability and other Charter factors, including factors traditionally taken into consideration in the determination of terms and conditions of employment.

ISSUE 3: ZIPPER CLAUSE

The City proposes the addition of the following language to Article V.

V.B. AMENDMENT OR MODIFICATION

311. This Agreement may be amended or modified, but only in writing, upon the mutual consent of the parties-, subject to any necessary approvals.

V.C. ZIPPER CLAUSE

312. The parties agree that the current Memorandum of Understanding shall continue in full force and effect for its stated term, and that any successor ~~Departmental~~ Memorandum of Understanding ~~negotiated during the term of this Agreement~~ will be negotiated as provided in Section A8.590-5 of the Charter.

313. Except as may be amended through the procedure provided in Article V.B. above, this Agreement sets forth the full and entire understanding of the parties regarding the matters herein and any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding the matters covered by this Agreement are hereby superseded or terminated in their entirety.

Each party hereto voluntarily and unqualifiedly waives its rights to negotiate, and agrees that the other party shall not be required to negotiate, with respect to any matter covered herein during the term of this Agreement. Nothing in this section shall preclude the parties from mutually agreeing to meet and confer on any issues within the scope of representation during the term of this Agreement.

The DSA is opposed to any change in the current language.

The relevant Charter factors include internal comparability of terms and conditions of other CCSF employees and traditional factors such as labor relations law and principles.

The primary reason the City gives in justification for this proposal is that the proposed new language is common in other City MOUs, in particular the Deputy Probation Officers' MOU (CX 41). However, no such language is in the POA's MOU (CX 9); nor is it in the Firefighters' MOU (CX 10) or MSA's MOU (CX 8). The Deputy Probation Officer's MOU did not exclude any past practices until those practices were identified and arbitrated.

Here, despite the DSA's request, the City did not provide SFDSA with sufficient information to know what side letters will be voided if its proposal is adopted. DSA is legally entitled to such information so that it may fully analyze and respond to proposals during negotiations. And the Board is unable to assess the import of the City's proposal if it does not

know what side agreements and past practices are to be excluded.

The Board finds that the City's proposal is not warranted by internal comparability or other Charter factors, including factors traditionally taken into consideration in the determination of terms and conditions of employment.

CONCLUSION

A majority of the Board decided each issue discussed above. Panel member Whitehouse dissented on Issues 2 and 3. Panel member Jarvis dissented on Issue 1.

AWARD

- 1. The Board awards the City's last, best and final offer to increase the advanced POST premium to 6.5% as described above.**
- 2. The Board awards DSA's last, best and final offer on Uniform Allowance as described above.**
- 3. The Board finds the City's proposal to change Articles V.B and V.C unwarranted by the Charter factors.**

Dated: May , 2019.

By: Katherine J. Thomson
Katherine J. Thomson, Arbitrator/Mediator

Dated: May 14, 2019.

By: Michael Jarvis
Michael Jarvis, DSA Panel Member

Dated: May 14, 2019.

By: Melissa Whitehouse
Melissa Whitehouse, City Panel Member

Dissenting Opinion of Michael Jarvis:

The DSA respectfully dissents from the Arbitration Board's decision on POST premiums. Given that the City increased the POA's pay attributable to both the intermediate and advanced POST certificates by two (2) percent each in the last round of bargaining, the DSA believes that

an increase in pay attributable to only the advanced certificate of 1.5% is the more reasonable proposal. Indeed, even if the City adopted the DSA's proposal, DSA members would still receive 0.5% less than POA members for the same degree by the time the contract is implemented (7.5% vs 8.0%). (*Id.*) Parity with the POA with respect to the value of POST pay is imperative.

Moreover, an increase in POST pay is an inexpensive way to increase the DSA's standing in the Parties' total compensation survey at a lower cost to the City because not all DSA members are eligible for the advanced certificate. In short, the DSA's proposal was a win/win for both Parties.