

**PURSUANT TO IMPASSE RESOLUTION PROCEDURES
A8.409-4 & 8A.104 OF CITY AND COUNTY OF SAN FRANCISCO CHARTER**

In the Matter of an Interest Arbitration
Between
SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY (SFMTA),
CITY AND COUNTY OF SAN
FRANCISCO,

and

SEIU LOCAL 1021-SERVICE CRITICAL
CLASSIFICATIONS

ARBITRATION AWARD

For the SFMTA:

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

Jonathan Yank, Esq.
Deputy City Attorney

For the Union:

Kerianne Steele, Esq.
Paul Pfeilschiefter, Esq.
Weinberg, Roger Rosenfeld

David Canham
Regional Director, SEIU 1021

Arbitration Board

Neutral Member:

David A. Weinberg
Arbitration Mediation and Conflict Resolution

Union Member:

Vincent A. Harrington Jr.

SFMTA Member:

Derek Kim

PROCEDURAL BACKGROUND

In accordance with the Impasse Resolution Procedures stated in Charter Section A8.409-4, the parties selected David A. Weinberg as the Neutral Chairperson of the Board of Arbitration.

Derek Kim was selected by the SFMTA and the City and County of San Francisco (hereinafter "City") to be the management Arbitration Board member, and Vincent A. Harrington Jr. was selected by the Service Employees International Union, Local 1021 (hereinafter "Union") to be its Arbitration Board Member.

The Arbitration Board held a formal evidentiary hearing in the City on May 7, 2019. The Arbitration Board also met in private mediation sessions in accordance with the impasse resolution procedures contained in Charter Section A8.409-4, on May 6, 2019. After reaching agreements on a number of issues, the Chairperson directed the parties on May 7, 2019 to submit their last offer of settlement on each remaining issue in dispute.

The Board selected whichever last offer of settlement on that issue it finds by a preponderance of the evidence most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment, including but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of other employees in the City and County of San Francisco; 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 enhancement or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the Arbitration Board. In addition, the Board considered the factors stated in 8A.104(n): the interest and welfare of transit riders, residents, and other members of the public; the Agency's ability to meet the costs of the decision of the arbitration board without materially reducing service or requiring that the Agency raise fares in a manner inconsistent with section 8A.108(b); and the Agency's ability to efficiently and effectively tailor work hours and schedules for transit system employees to the public demand for transit service.

In weighing each proposal under these factors, the Board also considered the tentative agreements reached by the parties which are incorporated herein by this reference.

PART I: ECONOMIC PROPOSALS

The Neutral Chairperson considered the total economic impact contained in the parties' final offers and the tentative agreements in making these determinations. Taken as a whole, the

implementation of these economic items contained in the parties' final offers will enable the SFMTA to recruit and retain employees in a competitive urban environment, and it reflects the need to have employees maintain pace with cost of living increases particularly when economic conditions are robust. The evidence presented at the Arbitration supports the perspective that the City and the SFMTA currently, and at least for the next two years will have the resources to support the requirements of the economic package, as well as support the need for the upkeep and maintenance of the transit fleet, in delivering service to the citizens workers and visitors to the City.

The Chairperson worked with the parties to accept compromises on a variety of the economic and non-economic issues raised during this process, so as to best meet the needs of the represented employees and the SFMTA. The parties submitted the following issues for resolution to the Arbitration Board, with their final offer on each issue. The remaining issues are as follows:

ISSUE #1 – Longevity, Union Proposal #4

Union's LBFO:

Proposal to the SFMTA: #4 (LBFO)

LBFO – May 7, 2019

Longevity Premium

266. Effective ~~July 1, 1995~~ Notwithstanding July 1, 2019, notwithstanding the provisions of sub-sections (1), (2) or (3) of ~~Article III.J.~~ Article III.G. SALARY STEP PLAN, after completion of ten (10) years of service for the City ~~and thereafter~~ in any classification, an employee shall be granted an additional ~~thirty cent (\$.30)~~ forty cents (\$.40) per hour longevity ~~increment to receive longevity pay~~, unless he/she voluntarily moves to another classification.
267. Effective ~~July 1, 1997~~: July 1, 2019, a An employee who voluntarily moves to another classification shall not be eligible for longevity pay until he/she has served ten (10) continuous years in the classification. Notwithstanding the preceding sentence, an employee who currently receives longevity pay shall continue to receive such pay.

SFMTA's LBFO:

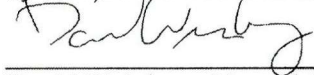
Union Proposal #4 – Longevity Premium

Longevity Premium

266. Effective July 1, 1995- Notwithstanding the provisions of sub-sections (1), (2) or (3) of section III.J. SALARY STEP PLAN, after completion of ten (10) years of service for the City and thereafter in any classification an employee shall be granted an additional thirty cents (\$0.30) per hour longevity increment to receive longevity pay, unless he/she the employee voluntarily moves to another classification. Effective July 1, 2020, that longevity increment shall increase to forty cents (\$0.40) per hour.
267. Effective July 1, 1997: An employee who voluntarily moves to another classification shall not be eligible for longevity pay until he/she the employee has served ten (10) continuous years in the classification. Notwithstanding the preceding sentence, an employee who currently receives longevity pay shall continue.

RULING: The Panel accepts the SFMTA's final offer on Longevity, Union Proposal #4.

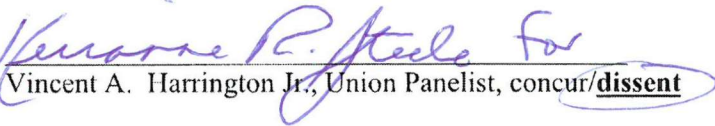
The SFMTA's final offer on longevity most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The proposal offered by the SFMTA, in addition to the accepted wage package, is sufficient to keep pace with the recent consumer price index (CPI); to continue to be a regional leader on wages and benefits, and be able to retain and recruit employees to deliver transit services. It also conforms to the other factors to be considered by the Board as listed in the Charter under A8.409-4 and 8A.104 (n).



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

ISSUE #2 – Transit Passes, Union Proposal #32

Union's LBFO:

**Proposal to the SFMTA: #32 (LBFO)
Successor Memorandum of Understanding**

LBFO – May 7, 2019

Transit Passes

SFMTA shall provide system passes to 9131 Station Agents, their spouses and legally dependent children under nineteen (19) years of age who are living with the Station Agent. If a Station Agent's marital status changes, and when a dependent child reaches age nineteen (19), the Station Agent shall return those passes. If a Station Agent separates from employment for any reason other than retirement, the Station Agent shall return all system passes. For the term of this agreement, SFMTA shall provide retired employees with system passes. Employees and retirees have no vested entitlement to system passes after the term of this Agreement.

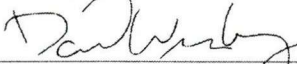
SFMTA's LBFO:

Union Proposal #32 – Transit Passes

The panel should reject the Union's proposal.

RULING: The Panel accepts the Union's final offer on Transit Passes, Union Proposal #32.

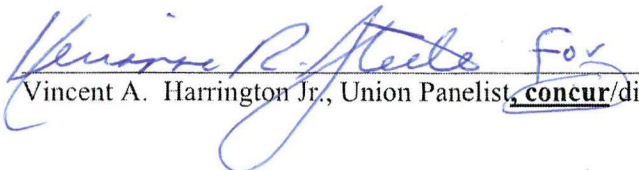
The Union's final offer on transit passes, most nearly conforms to the requirements listed in the Charter A8.409-4(d) for consideration by the Arbitration Board. This proposal offered by the Union, is reasonable when considering the other economic benefits of the overall financial package. It also conforms to the other factors to be considered by the Board as listed in the Charter under 8A.104 (n). It should be noted that the true cost to the City will be less than the stated value of the passes.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

ISSUE #3 – Salary Step Increments for Classifications 8214 and 8216, Union Proposal #35

Union's LBFO:

LBFO - May 7, 2019

186. Classifications 8214 Parking Control Officer and 8216 Senior Parking Control

Officer

- a. Effective July 1, 2019:
 - Salary Step increments for 8214 Parking Control Officers shall decrease by 2% for the first step.
 - Salary Step increments for 8216 Senior Parking Control Officers shall decrease by 2% for the first step.
- b. Effective July 1, 2020:
 - Salary Step increments for 8214 Parking Control Officers shall increase by 2% for the last step (Step 7).
 - Salary Step increments for 8216 Senior Parking Control Officers shall increase by 2% for the last step (Step 7).
- c. For both 8214 and 8216 classifications, steps 2-6 remain as in the prior MOU.

Effective July 1, 2014, the salary steps for 8214 and 8216 shall be adjusted as follows:

- d. ~~One 1.5% salary step shall be added above the 5-step range.~~
- e. ~~One 1.5% salary step shall be added below the 5-step range.~~

Effective July 1, 2015, the salary steps for 8214 and 8216 shall be adjusted as follows:

- a. ~~The 1.5% salary step added above the 5-step range on July 1, 2014, shall be increased an additional 1.5% to become a 3% step.~~
- b. ~~The 1.5% salary step added below the 5-step range on July 1, 2014, shall be lowered an additional 1.5% to become 3% below Step 2.~~

Effective July 1, 2014, incumbents in classes 8214 and 8216 shall advance to the appropriate salary step as follows:

- a. ~~8214 and 8216 employees who have been at Step 5 for more than a year as of July 1, 2014, shall advance to the new top step (i.e., the new 1.5% top step created 7/1/14) in their respective new salary ranges.~~
- b. ~~8214 and 8216 employees who have been at Step 5 for less than a year as of July 1, 2014, shall remain at that level, and advance to the new top step (i.e., the new 1.5% top step created 7/1/14) in their respective classes on their anniversary date.~~

Effective July 1, 2015, incumbents in classes 8214 and 8216 shall advance to the appropriate salary step as follows:

- a. ~~8214 and 8216 employees who have been at the top step for one year as of July 1, 2015, shall advance to the new top step (i.e., the new 3% top step created 7/1/15), in the respective new~~

- salary ranges.
- b. ~~8214 and 8216 employees who have been at the top step for less than a year as of July 1, 2015, shall remain at that level, and advance to the new top step (i.e., the new 3% top step created 7/1/15) in their respective new salary ranges on their anniversary date.~~

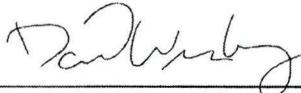
SFMTA's LBFO:

Union Proposal #35 – Salary Step Increments for Classifications 8214 and 8216

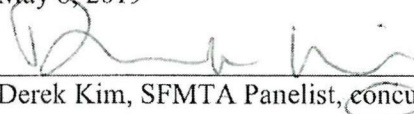
The panel should reject the Union's proposal.

RULING: The Panel accepts the SFMTA's final offer on Union Proposal #35 – Salary Step Increments for Classifications 8214 and 8216.

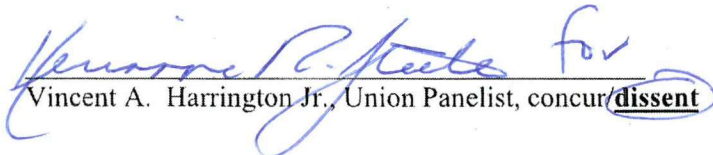
The SFMTA's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The Union has failed to provide sufficient proof that this classification needs an adjustment to the salary steps for the higher steps when taking into account the entire economic package. The proposal offered by the SFMTA, in addition to the accepted wage package, is sufficient to keep pace with the recent CPI, to continue to be a regional leader on wages and benefits, and be able to retain and recruit employees to deliver transit services. It also conforms to the other factors to be considered by the Board as listed in the Charter under A8.409-4 and 8A.104 (n).



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/**dissent**

ISSUE #4 - Weekend Pay Premium, Union Proposal #42

Union's LBFO:

LBFO – May 7, 2019

New Section. Weekend Pay Premium Pay 9110 Fare Collections Receiver, 9116 Sr. Fare Collections Receiver, 9117 Principal Fare Collections Receiver, 9102 Transit Car Cleaner, 9126 Transit Traffic Checker, 9128 Sr. Transit Traffic Checker, 9131 Station Agent

Employees in the 9110 Fare Collections Receiver, 9116 Sr. Fare Collections Receiver, 9117 Principal Fare Collections Receiver, 9102 Transit Car Cleaner, 9126 Transit Traffic Checker, 9128 Sr. Transit Traffic Checker, 9131 Station Agent assigned to Saturday as a

part of their regularly scheduled forty (40) hour week will receive an additional premium of three percent (3.0%).

Employees in the 9110 Fare Collections Receiver, 9116 Sr. Fare Collections Receiver, 9117 Principal Fare Collections Receiver, 9102 Transit Car Cleaner, 9126 Transit Traffic Checker, 9128 Sr. Transit Traffic Checker, 9131 Station Agent assigned to Sunday as a part of their regularly scheduled forty (40) hour week will receive an additional premium of six percent (6.0%).

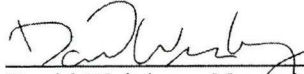
SFMTA's LBFO:

Union Proposal #42 – Weekend Pay Premium


The panel should reject the Union's proposal.

RULING: The Panel accepts the SFMTA's final offer on Union Proposal #42 – Weekend Pay Premium.

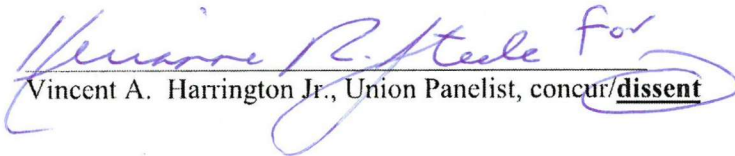
The SFMTA's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. It is understandable that Union members who work alongside other workers (of a different classification and Union), who receive a weekend differential, would also want to receive the differential. However, this fact alone does not create the justification for this group of workers to receive a weekend premium as well. The Union did not have sufficient proof of an inability to staff the weekend shifts, or some other rational that would necessitate the need for such a premium. The overall economic package offered by the SFMTA, in addition to the accepted wage package, is sufficient to keep pace with the recent CPI, to continue to be a regional leader on wages and benefits, and be able to retain and recruit employees to deliver transit services, and conforms to the other factors to be considered by the Board as listed in the Charter under A8.409-4 and 8A.104 (n).



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derick Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

PART II: NON-ECONOMIC ISSUES

The parties during this Interest Arbitration process, reached many tentative agreements and narrowed their differences on the remaining outstanding non-economic issues. The decision of the Arbitration Board on these issues takes into consideration the factors listed in Charter Section

A8.409-4 (d). It is the Chairperson's view that in interest arbitration the party seeking a change in the status quo bears the burden to support the need for change in contractual language.

ISSUE #1 – Departmental Side Letter re 9131 Station Agents, Union Proposal #21

SFMTA's LBFO:

Union Proposal #21 – Departmental Supplementary Agreement/Class 9131

**DEPARTMENTAL SUPPLEMENTARY AGREEMENT/CLASS 9131
BETWEEN
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
MUNICIPAL RAILWAY
AND
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021**

ARTICLE I RECOGNITION

This Departmental Supplementary Agreement is entered into between the Municipal Transportation Agency Municipal Railway and SEIU Local 1021.
Covered under this agreement are Class 9131 Station Agents.

ARTICLE II REQUESTS FOR TIME OFF

The following procedures will continue to be in effect:

- A. All requests for time off (comp. time, lieu days, one day vacation, etc.) must be submitted to Station Operations at least 10 business days prior to the requested date.
- B. All requests must be in duplicate.
- A. All weekend requests must be made on the proper color coded sheets.
- B. Station Operations will return the duplicate copy with approval or denial at least five (5) business days before the date requested.
- C. Even though Station Operations will try to grant short notice requests, the operation of the subway must be our first concern.
- D. Requests not conforming to these guidelines will be handled on an individual case basis to be resolved by the manager of Station Operations.
- E. Requests will be considered on a first come first serve basis.

ARTICLE III POLICY ON TARDINESS

Station Operations defines tardiness in the following way:

- A. An employee who arrives at his/her assigned work location after the scheduled start time for a designated shift or assignment with the exception of opening agents in accordance with reporting procedures.
- B. An employee who has not followed the recognized reporting procedures.
- C. An employee reporting late, with less than one half (1/2) hour notification, to Station Operations or Control Center, prior to the start time of their regular scheduled shift or assignment.

Station Operations will use the above listed definitions as our guidelines in determining any employees late report. Station Operations reserves the right to request from the employee who has an excused late report, some type of proof that their emergency was valid, i.e. receipts from a repair service, etc. Employees violating the tardiness policy are subject to the disciplinary procedure stated in Article XII and loss of pay.

ARTICLE IV VACATION POLICY

Vacations are signed for on the calendar year. The steps outline below will be used to approve vacations:

- A. A seniority list will be posted in each Booth and at Station Operations. Sign-up for vacation will be by seniority in accordance with date of hire into the 9131 Class. Sign-up forms are arranged so that full week vacations run Saturday through Friday. Agents must sign for the full vacation week.
- B. After each Agent's name on the seniority list will be a time to call the Bid Supervisor. If Agents have any questions regarding the bid, contact the Bid Supervisor.
- C. If Agents do not call at their appointed time or submit a bid slip 5 days in advance the Bid Supervisor will place a PASS behind their name. The sign-up will continue as scheduled. Agent(s) so passed will be permitted to sign-up only on open dates available at the end of the vacation bid.
- D. Agents not signing at this time will not be able to use seniority to bump at a later date.
 - (1) Four agents per week from January to December.
 - (2) Four agents per week from May to August.
- E. Agents cannot sign-up for vacation which will not be earned at the time of selected vacation date(s).
- F. Two weeks written notice must be given to Station Operations for cancellation of vacation. Vacations signed for and later cancelled at Agent's request will be available by first come first serve.
- G. Every Agent bidding on vacation will be required to submit a signed "Vacation Request Form" and submit it to Station Operations.
- H. Station Agents shall confirm their vacation with the Bid Supervisor by phone. An approved copy will be returned to the Agent within seven (7) business days of the bid.
- I. Station Operations shall be responsible to be aware of maximum vacation time earned up to the last pay period prior to the sign-up, for each employee to guarantee full vacation privileges as entitled. Employees are entitled to bid for all time to be earned by the time vacation is scheduled.

There shall be an annual vacation sign-up for Station Agents in the Fall of each year. Employees shall submit vacation sign-up requests in seniority order. No employee may request more than their annual vacation accrual amount in their initial request.

After all eligible employees have had an opportunity to submit a vacation request, an additional opportunity to request vacation shall be provided on a first come, first served basis. Such additional requests shall be granted to the extent that the work schedule will accommodate them. An employee may submit a request to take more than their annual accrual amount for exceptional circumstances and all such requests shall be considered by the employer on a case-by-case basis and shall be granted if operational needs permit.

The parties will may reevaluate the vacation sign-up policy after eighteen (18) months upon the request of either party. Arbitrator ~~Tom Angelo~~ David Weinberg will retain jurisdiction if the parties are unable to agree upon modifications at that time.

ARTICLE V STATION AGENTS SENIORITY POLICY FOR PURPOSES OF BIDDING

Station Agents seniority shall be established by the following factors, collectively or individually:

Classification Service

All Station Agents seniority will be assigned based on classification date of employment and in accordance with departmental rules and regulations.

Civil Service date of employment (City wide service) shall have no bearing on departmental seniority and cannot be used for bidding purposes.

A. Place on list

In the event of multiple applicants hired at one time, seniority will be assigned by their place on the Civil Service list. In the event of a tie, the highest last four digits of the employee's social security number will break the tie.

B. Full-time/Part-time

Status of position shall have no bearing on seniority placement. Full-time and part-time status shall be listed together on (1) department seniority list. In the event of a change in status, seniority shall remain intact and without change. This is in accordance to Section II of this policy and past practice.

C. Seniority List

One (1) department List shall be kept and maintained on the immediate job site(s) and management office at 131 Lenox Way (or future site) at all times. Management and Local 1021 Chapter President or his or her designee, shall be responsible for updating seniority lists as changes occur.

Official seniority list shall be used for shift bids, vacation bids, overtime, fire drills and special events. It will be used as an important factor in the selection of out of class assignments.

ARTICLE VI SICK ABUSE POLICY

A. The following listed items will be used as the criteria to determine what Station Operations will consider as abuse of sick leave. Station Operations, to remain fair, will consider each case on an individual basis prior to placing anyone on a "Sick Abuse List". The past accumulation of large amounts of sick leave, and verifiable long term illness will be taken into consideration. Using 13 days for full-time employees or proportionate use by part-time employees.

1. Calling in sick more than 3 non-continuous occasions in a quarter.
2. Establishing any type of sick use patterns, 3 or more separate incidents, within a 3 month period. (i.e. always before or after R.D.O.'s, etc.) NOTE: Employees R.D.O.'s will be taken into consideration. *Exceptions: 10 hour agents who have split days off.*

(a) ~~*Exceptions: 10 hour agents who have split days off.*~~

3. Establishing a pattern of going on the sick list during the middle of his/her shift.
 4. A pattern of reporting sick on regular work days after working his/her R.D.O.
- B. Station Operations will use the following guidelines to keep records:
1. A Sick Abuse List will be established and
 - (a) Employees will be closely monitored for a 12 month period from the date they are placed on Step II discipline;
 - (b) any employee to be placed on the sick abuse list will receive prior written notice of such including an explanation of the nature of the abuse.
 2. Vacation/Lieu Time/Floating Holiday will not be used to substitute for sick days unless authorized by management.
 3. Verifiable Extended illnesses will not be considered as sick abuse.

BENEFICIAL PAST PRACTICES

All verifiable past practices in effect at the time of this agreement shall remain in effect through the term of this agreement.

ARTICLE VII STAFFING

Each quarter, the Union and Station Operations agree to meet and review staffing needs. Management will provide to the Union in advance of each meeting, all documents pertaining to staffing including, but not limited to, all regular and overtime budgets, and information regarding all open requisitions.

ARTICLE VIII SHIFT BIDDING

The Department shall normally provide a new shift bid twice ~~Twice~~ annually, in January, and July, a new shift bid will be made available. If for any reason the SFMTA determines that the shift bid cannot go forward as scheduled, SFMTA shall notify and meet with the Union within thirty (30) days of reaching such determination to attempt to mutually agree on the effective date of the shift bid. Thirty days prior to the bid, the Union and Management will meet and confer over the terms and schedules of the bid. The Union shall be allowed to have a monitor present at the bid.

ARTICLE IX HEALTH & SAFETY

- A. SFMTA will make every effort to maintain staffing at a level which provides a safe and healthful environment for Station Agents and the general public.
- B. Booths must be maintained and cleaned on a regular basis.
- C. The Union and Management agree to establish a joint Health and Safety Committee consisting of 2 union representatives and 2 management representatives. The committee will study and recommend action on issues related to exhaust from the computer and other equipment and air quality and temperatures within the booth.

ARTICLE X OVERTIME

Agents will be notified in advance of events where funds are available for overtime work.

ARTICLE XI CAREER ADVANCEMENT

Management shall insure that all Station Agents receive notification of any classes, conferences, programs, and promotional opportunities in a timely manner.

ARTICLE XII DISCIPLINARY PROCEDURE

The purpose of this procedure is to provide progressive, corrective discipline. Every effort will be made to administer discipline towards the goal of improving employee performance. Employees with chronic performance problems will be advised of the services available through Employee Assistance Program. Employees with alcohol and drug abuse problems will be allowed sufficient time off ~~with out~~ **without** penalty to rehabilitate.

The following step process applies to routine minor violations of daily operations including tardiness, sick abuse, and late reports. More serious offenses may involve skipping over the initial steps and following the guidelines proposed in the PUC Disciplinary Handbook.

Step 1 – Documented Verbal Warning

- A. Within 30 calendar days of the incident leading to discipline the employee may be given a verbal warning.
- B. The verbal warning must be given at a meeting between the supervisor and employee. The employee will be told of her/his right to have a Union Representative present.
 1. At the meeting the employee will be told:
 - a. The specific nature of the offence;
 - b. the specific corrective action needed to remedy the problem;
 - c. that the employee must not repeat the offense within the next 3 months; and
 - d. what specific further disciplinary action may be taken if the offense is repeated.
 2. The employee is required to sign a “verbal warning card.” The employees’ signature does not acknowledge guilt, it merely acknowledges the verbal warning took place.
 3. Second verbal warning. A second violation within the three (3) month probationary period shall extend the probation to six (6) months beginning from the date the second verbal warning is issued.

Step 2

- A. Within 30 days of the incident leading to discipline the employee may be given a white Employee Conference Form and disciplinary conference. The employee is required to sign the Form. The employee’s signature does not acknowledge guilt, it merely acknowledges receipt of the form. The employee must be provided with a copy of the signed Form within 5 calendar days.
- B. The Form must state the specific nature of the offense. Corrective action is to be taken and what disciplinary action will result if the problem is not corrected.
- C. The employee must be informed of his/her right to Union representation at the conference. Management will provide notification of the conference to the Union.
- D. If the discipline is upheld the employee may not repeat the offense during the six (6) month probationary period which will begin on the date Form is issued.

Step 3

- A. Within 30 days of the incident leading to discipline the employee must be given a D-1 and disciplinary conference. The employee is required to sign the D-1. The employee’s signature does not acknowledge guilt, it merely acknowledges receipt of the D-1. The employee must be provided with a copy of the signed D-1 within 5 calendar days.

- B. The D-1 must state the specific nature of the offense, what corrective action must be taken and what disciplinary action will result if the problem is not corrected.
- C. The employee must be informed of his/her right to Union representation at the conference. Management will provide notification of the conference to the Union.
- D. If the discipline is upheld, the employee may not repeat the offense during the nine (9) month probationary period which will begin the date the D-1 is issued.

Step 4

- A. Within 30 days of the incident leading to discipline the employee must be given a second D-1 and disciplinary conference. The employee is required to sign the D-1. The employee's signature does not acknowledge guilt, it merely acknowledges receipt of the D-1. The employee must be provided with a copy of the signed form within 5 calendar days.
- B. The D-1 must clearly state the specific nature of the offense, the purpose of discipline, corrective action to be taken and what discipline will result if the problem is not corrected.
- C. The employee must be informed of his/her right to Union representation at the conference. Management will provide notification of the conference to the Union.
- D. If the discipline is upheld, the employee must not repeat the offense for the next nine (9) months probationary period, which will begin on the date the Form III is issued.

Step 5 – Suspension

- A. Within 30 days of the incident leading to discipline the employee must be given a notice of proposed disciplinary action – suspension (Form D-2). The notice must contain:
 - 1. A statement of the specific charges.
 - 2. The rule or policy violated.
 - 3. The date(s) of the violation.
 - 4. The specific discipline proposed.
 - 5. The date that the discipline will begin.
 - 6. A statement informing the employee of his/her right to a full evidentiary hearing prior to the imposition of discipline.
 - 7. A statement informing the employee of his/her right to seek all evidence leading to the decision to discipline.
 - 8. A statement informing the employee of his/her right to Union representation. Management will provide the Union with a Notice of Proposed Discipline.
 - 9. A statement informing the employee of other appeal rights.
- B. The employee must be informed that any reoccurrence of the same offense may lead to discharge.

Step 6 – Recommendation for Dismissal

- A. Within 30 days of the incident leading to discipline the employee must be given a Notice of Proposed Discipline – Dismissal. The notice must contain:
 - 1. A statement of the specific charges.
 - 2. The rule or policy violated.

3. The date(s) of the violation.
4. The specific discipline proposed.
5. The date that the discipline will begin.
6. A statement informing the employee of his/her right to a full evidentiary hearing prior to the imposition of discipline.
7. A statement informing the employee of his/her right to seek all evidence leading to the decision to discipline.
8. A statement informing the employee of his/her right to Union representation. Management will provide the Union with a Notice of Proposed Discipline.
9. A statement informing the employee of other appeal rights.

TERM OF AGREEMENT

This agreement shall ~~become effective July 1, 2014 and remain in effect through June 30, 2019~~
2022.

Union's LBFO:

LBFO – May 7, 2019

**DEPARTMENTAL SUPPLEMENTARY AGREEMENT/CLASS 9131
BETWEEN**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
MUNICIPAL RAILWAY
AND
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021**

ARTICLE I RECOGNITION

This Departmental Supplementary Agreement is entered into between the Municipal Transportation Agency Municipal Railway and SEIU Local 1021.

Covered under this agreement are Class 9131 Station Agents.

ARTICLE II REQUESTS FOR TIME OFF

The following procedures will continue to be in effect:

- A. All requests for time off (comp. time, lieu days, one day vacation, etc.) must be submitted to Station Operations at least 10 business days prior to the requested date.
- B. All requests must be in duplicate.
 - A. All weekend requests must be made on the proper color coded sheets.
 - B. Station Operations will return the duplicate copy with approval or denial at least five (5) business days before the date requested.

- C. Even though Station Operations will try to grant short notice requests, the operation of the subway must be our first concern.
- D. Requests not conforming to these guidelines will be handled on an individual case basis to be resolved by the manager of Station Operations.
- E. Requests will be considered on a first come first serve basis.

ARTICLE III POLICY ON TARDINESS

Station Operations defines tardiness in the following way:

- A. An employee who arrives at his/her assigned work location after the scheduled start time for a designated shift or assignment with the exception of opening agents in accordance with reporting procedures.
- B. An employee who has not followed the recognized reporting procedures.
- C. An employee reporting late, with less than one half (1/2) hour notification, to Station Operations or Control Center, prior to the start time of their regular scheduled shift or assignment.

Station Operations will use the above listed definitions as our guidelines in determining any employees late report. Station Operations reserves the right to request from the employee who has an excused late report, some type of proof that their emergency was valid, i.e. receipts from a

repair service, etc. Employees violating the tardiness policy are subject to the disciplinary procedure stated in Article XII and loss of pay.

ARTICLE IV VACATION POLICY

Vacations are signed for on the calendar year. The steps outline below will be used to approve vacations:

- A. A seniority list will be posted in each Booth and at Station Operations. Sign-up for vacation will be by seniority in accordance with date of hire into the 9131 Class. Sign-up forms are arranged so that full week vacations run Saturday through Friday. Agents must sign for the full vacation week.
- B. After each Agent's name on the seniority list will be a time to call the Bid Supervisor. If Agents have any questions regarding the bid, contact the Bid Supervisor.
- C. If Agents do not call at their appointed time or submit a bid slip 5 days in advance the Bid Supervisor will place a PASS behind their name. The sign-up will continue as scheduled. Agent(s) so passed will be permitted to sign-up only on open dates available at the end of the vacation bid.
- D. Agents not signing at this time will not be able to use seniority to bump at a later date.
 - (1) Four agents per week from January to December.
 - (2) Four agents per week from May to August.
- E. Agents cannot sign-up for vacation which will not be earned at the time of selected vacation date(s).
- F. Two weeks written notice must be given to Station Operations for cancellation of vacation. Vacations signed for and later cancelled at Agent's request will be available by first come first serve.
- G. Every Agent bidding on vacation will be required to submit a signed "Vacation Request Form" and submit it to Station Operations.
- H. Station Agents shall confirm their vacation with the Bid Supervisor by phone. An approved copy will be returned to the Agent within seven (7) business days of the bid.
- I. Station Operations shall be responsible to be aware of maximum vacation time earned up to the last pay period prior to the sign-up, for each employee to guarantee

full vacation privileges as entitled. Employees are entitled to bid for all time to be earned by the time vacation is scheduled.

There shall be an annual vacation sign-up for Station Agents in the Fall of each year. Employees shall submit vacation sign-up requests in seniority order. No employee may request more than their annual vacation accrual amount in their initial request.

After all eligible employees have had an opportunity to submit a vacation request, an additional opportunity to request vacation shall be provided on a first come, first served basis. Such additional requests shall be granted to the extent that the work schedule will accommodate them.

An employee may submit a request to take more than their annual accrual amount for exceptional circumstances and all such requests shall be considered by the employer on a case-by-case basis and shall be granted if operational needs permit.

The parties ~~may~~ will reevaluate the vacation sign-up policy after eighteen (18) months upon the request of either party. Arbitrator ~~Tom Angelo~~ David Weinberg will retain jurisdiction if the parties are unable to agree upon modifications at that time.

ARTICLE V STATION AGENTS SENIORITY POLICY FOR PURPOSES OF BIDDING

Station Agents seniority shall be established by the following factors; collectively or individually:

Classification Service

All Station Agents seniority will be assigned based on classification date of employment and in accordance with departmental rules and regulations.

Civil Service date of employment (City wide service) shall have no bearing on departmental seniority and cannot be used for bidding purposes.

A. Place on list

In the event of multiple applicants hired at one time, seniority will be assigned by their place on the Civil Service list. In the event of a tie, the highest last four digits of the employee's social security number will break the tie.

B. Full-time/Part-time

Status of position shall have no bearing on seniority placement. Full-time and part-time status shall be listed together on (1) department seniority list. In the event of a change in status, seniority shall remain intact and without change. This is in accordance to Section II of this policy and past practice.

C. Seniority List

One (1) department List shall be kept and maintained on the immediate job site(s) and management office at 131 Lenox Way (or future site) at all times. Management and Local

1021 Chapter President or his or her designee, shall be responsible for updating seniority lists as changes occur.

Official seniority list shall be used for shift bids, vacation bids, overtime, fire drills and special events. It will be used as an important factor in the selection of out of class assignments.

ARTICLE VI SICK ABUSE POLICY

- A. The following listed items will be used as the criteria to determine what Station Operations will consider as abuse of sick leave, Station Operations, to remain fair, will consider each case on an individual basis prior to placing anyone on a "Sick Abuse List". The past accumulation of large amounts of sick leave, and verifiable long term illness will be taken into consideration. Using 13 days for full-time employees or proportionate use by part-time employees.
1. Calling in sick more than 3 non-continuous occasions in a quarter.
 2. Establishing any type of sick use patterns, 3 or more separate incidents, within a 3 month period. (i.e. always before or after R.D.O.'s, etc.) NOTE: Employees R.D.O.'s will be taken into consideration.
 - (a) Exceptions: 10 hour agents who have split days off.
 3. Establishing a pattern of going on the sick list during the middle of his/her shift.
 4. A pattern of reporting sick on regular work days after working his/her R.D.O.
- B. Station Operations will use the following guidelines to keep records:
1. A Sick Abuse List will be established and
 - (a) Employees will be closely monitored for a 12 month period from the date they are placed on Step II discipline;
 - (b) any employee to be placed on the sick abuse list will receive prior written notice of such including an explanation of the nature of the abuse.
 2. Vacation/Lieu Time/Floating Holiday will not be used to substitute for sick days unless authorized by management.
 3. Verifiable Extended illnesses will not be considered as sick abuse.

BENEFICIAL PAST PRACTICES

All verifiable past practices in effect at the time of this agreement shall remain in effect through the term of this agreement.

ARTICLE VII STAFFING

Each quarter, the Union and Station Operations agree to meet and review staffing needs. Management will provide to the Union in advance of each meeting, all documents pertaining to

staffing including, but not limited to, all regular and overtime budgets, and information regarding all open requisitions.

ARTICLE VIII SHIFT BIDDING

Twice annually, in January, and July, a new shift bid will be made available. Thirty days prior to the bid, the Union and Management will meet and confer over the terms and schedules of the bid. The Union shall be allowed to have a monitor present at the bid.

ARTICLE IX HEALTH & SAFETY

- A. SFMTA will make every effort to maintain staffing at a level which provides a safe and healthful environment for Station Agents and the general public.
- B. Booths must be maintained and cleaned on a regular basis.
- C. The Union and Management agree to establish a joint Health and Safety Committee consisting of 2 union representatives and 2 management representatives. The committee will study and recommend action on issues related to exhaust from the computer and other equipment and air quality and temperatures within the booth.

ARTICLE X OVERTIME

Agents will be notified in advance of events where funds are available for overtime work.

ARTICLE XI CAREER ADVANCEMENT

Management shall insure that all Station Agents receive notification of any classes, conferences, programs, and promotional opportunities in a timely manner.

ARTICLE XII DISCIPLINARY PROCEDURE

The purpose of this procedure is to provide progressive, corrective discipline. Every effort will be made to administer discipline towards the goal of improving employee performance. Employees with chronic performance problems will be advised of the services available through Employee Assistance Program. Employees with alcohol and drug abuse problems will be allowed sufficient time off ~~without~~ ~~with-out~~ penalty to rehabilitate.

The following step process applies to routine minor violations of daily operations including tardiness, sick abuse, and late reports. More serious offenses may involve skipping over the initial steps and following the guidelines proposed in the PUC Disciplinary Handbook.

Step 1 – Documented Verbal Warning

- A. Within 30 calendar days of the incident leading to discipline the employee may be given a verbal warning.
- B. The verbal warning must be given at a meeting between the supervisor and employee. The employee will be told of her/his right to have a Union Representative present.
 - 1. At the meeting the employee will be told:
 - a. The specific nature of the offence;
 - b. the specific corrective action needed to remedy the problem;
 - c. that the employee must not repeat the offense within the next 3 months; and
 - d. what specific further disciplinary action may be taken if the offense is repeated.
 - 2. The employee is required to sign a "verbal warning card." The employees' signature does not acknowledge guilt, it merely acknowledges the verbal warning took place.
 - 3. Second verbal warning. A second violation within the three (3) month probationary period shall extend the probation to six (6) months beginning from the date the second verbal warning is issued.

Step 2

- A. Within 30 days of the incident leading to discipline the employee may be given a white Employee Conference Form and disciplinary conference. The employee is required to sign the Form. The employee's signature does not acknowledge guilt, it merely acknowledges receipt of the form. The employee must be provided with a copy of the signed Form within 5 calendar days.
- B. The Form must state the specific nature of the offense. Corrective action is to be taken and what disciplinary action will result if the problem is not corrected.
- C. The employee must be informed of his/her right to Union representation at the conference. Management will provide notification of the conference to the Union.
- D. If the discipline is upheld the employee may not repeat the offense during the six (6) month probationary period which will begin on the date Form is issued.

Step 3

- A. Within 30 days of the incident leading to discipline the employee must be given a D-1 and disciplinary conference. The employee is required to sign the D-1. The employee's signature does not acknowledge guilt, it merely acknowledges receipt of the D-1. The employee must be provided with a copy of the signed D-1 within 5 calendar days.

- B. The D-1 must state the specific nature of the offense, what corrective action must be taken and what disciplinary action will result if the problem is not corrected.
- C. The employee must be informed of his/her right to Union representation at the conference. Management will provide notification of the conference to the Union.
- D. If the discipline is upheld, the employee may not repeat the offense during the nine (9) month probationary period which will begin the date the D-1 is issued.

Step 4

- A. Within 30 days of the incident leading to discipline the employee must be given a second D-1 and disciplinary conference. The employee is required to sign the D-1. The employee's signature does not acknowledge guilt, it merely acknowledges receipt of the D-1. The employee must be provided with a copy of the signed form within 5 calendar days.
- B. The D-1 must clearly state the specific nature of the offense, the purpose of discipline, corrective action to be taken and what discipline will result if the problem is not corrected.
- C. The employee must be informed of his/her right to Union representation at the conference. Management will provide notification of the conference to the Union.
- D. If the discipline is upheld, the employee must not repeat the offense for the next nine (9) months probationary period, which will begin on the date the Form III is issued.

Step 5 – Suspension

- A. Within 30 days of the incident leading to discipline the employee must be given a notice of proposed disciplinary action – suspension (Form D-2). The notice must contain:
 - 1. A statement of the specific charges.
 - 2. The rule or policy violated.
 - 3. The date(s) of the violation.
 - 4. The specific discipline proposed.
 - 5. The date that the discipline will begin.
 - 6. A statement informing the employee of his/her right to a full evidentiary hearing prior to the imposition of discipline.
 - 7. A statement informing the employee of his/her right to seek all evidence leading to the decision to discipline.
 - 8. A statement informing the employee of his/her right to Union representation. Management will provide the Union with a Notice of Proposed Discipline.

9. A statement informing the employee of other appeal rights.
- B. The employee must be informed that any reoccurrence of the same offense may lead to discharge.

Step 6 – Recommendation for Dismissal

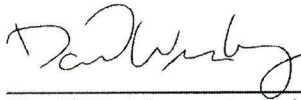
- A. Within 30 days of the incident leading to discipline the employee must be given a Notice of Proposed Discipline – Dismissal. The notice must contain:
1. A statement of the specific charges.
 2. The rule or policy violated.
 3. The date(s) of the violation.
 4. The specific discipline proposed.
 5. The date that the discipline will begin.
 6. A statement informing the employee of his/her right to a full evidentiary hearing prior to the imposition of discipline.
 7. A statement informing the employee of his/her right to seek all evidence leading to the decision to discipline.
 8. A statement informing the employee of his/her right to Union representation. Management will provide the Union with a Notice of Proposed Discipline.
 9. A statement informing the employee of other appeal rights.

TERM OF AGREEMENT

This agreement shall become effective July 1, ~~2014~~ **2019** and remain in effect through June 30, ~~2019~~ **2022**.

RULING: The Panel accepts the Union's final offer on Union Proposal #21 – Departmental Side Letter 9131 Station Agents.

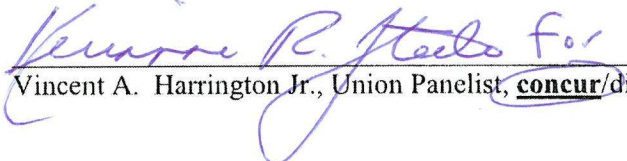
The Union's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The intention of the Union's proposal is to have this side letter attached as an addendum to the MOU.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

ISSUE #2 – Severance, SFMTA Proposal #14

SFMTA's LBFO:

SFMTA Proposal #14 – Severance

ARTICLE II – EMPLOYMENT CONDITIONS

D. LAYOFF

Severance


134. An employee who is laid off shall receive two weeks' pay for each year of service, in exchange for a release, in a form acceptable to the SFMTA, signed by the employee of any and all claims arising out of the employee's separation from employment by layoff (including claims arising under this Agreement) that the employee may have against the City or SFMTA, including any officer or employee thereof. An employee who accepts severance pay shall forfeit all holdover rights. The Union agrees not to pursue any grievance arising out of the layoff for an employee who accepts severance under this section. If an employee accepts severance pay and retires within two (2) years of accepting the severance pay, ~~he or she~~ the employee shall reimburse the City SFMTA for the full amount of the severance pay.

Union's LBFO:

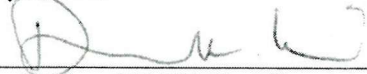
Union rejects SFMTA Proposal #14.

RULING: The Panel accepts the Union's final offer on SFMTA Proposal #14 - Severance.

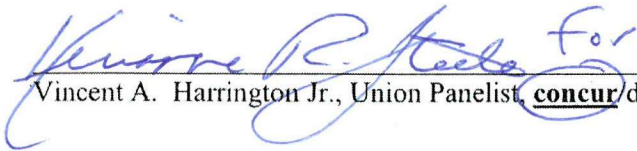
The Union's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The Chairperson believes that the SFMTA has not shown a compelling need to change the current language in the MOU.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

ISSUE #3 – Compensatory Time, SFMTA Proposal #32

SFMTA's LBFO:

SFMTA Proposal #32 – Compensatory Time

ARTICLE III – PAY, HOURS AND BENEFITS

E. OVERTIME COMPENSATION

268. Overtime is hereby defined to mean time worked in excess of eight (8) hours per day or forty (40) hours per week except those electing to work ten (10) or twelve (12) hour work days. In the event an employee elects to work a ten (10) hour day, for example, he/she shall begin earning overtime rates after ten (10) hours. Legal holidays shall count as time worked for the purpose of computing overtime.

Assignment of Overtime

269. When an overtime assignment must be made, the most senior qualified employees shall be given the first opportunity to volunteer for the overtime assignment. If there is an insufficient number of volunteers, assignment may begin with the least senior employees able to do the work.

270. Any employee working in excess of the regular or normal work day or week shall be compensated at the overtime rate of one-and-one-half times the base hourly rate which shall include a night differential if applicable.

271. Overtime compensation so earned shall be computed subject to all the provisions and conditions set forth herein.
272. Overtime shall be distributed on a voluntary, rotational basis. The rotation shall begin with the most senior qualified employee in the classification, in the department or in the facility and continue down through the seniority list which shall be provided to the Union upon request. Overtime shall be equalized among all volunteers on an annual basis. Each department shall provide its overtime records to the Union Steward upon request. Appointing Officers shall give as much notice as possible of available overtime to be worked.
273. Whenever possible, available overtime shall be posted a minimum of two (2) weeks in advance. This posting shall include the name of the first eligible employee to sign up for said overtime. The posting shall also include a cut-off date and time for signing up. Once the sign-up has been completed, the names of the employees who are to work the overtime shall be posted. In the event of an insufficient number of volunteers, employees shall be drafted to work the overtime by reverse seniority.
274. All contact attempts made for offering overtime shall be documented. Upon request, this information will be made available to the Union.
275. For the purposes of this provision, the evaluation of an employee's qualifications shall not be arbitrary.

Overtime for Non-"Z" Employees

1. *Overtime Pay or Compensatory Time*
276. Non-"Z" designated employees who work or; who are suffered to work overtime shall be paid in salary unless the individual employee and Appointing Officer or designee mutually agree to requests in writing compensatory time off in lieu of paid overtime. Compensatory time shall be earned at the rate of time and one-half (1-1/2).
2. *Maximum Accrual of Compensatory Time*
277. Employees occupying non-"Z" designated positions may not accumulate a balance of compensatory time earned in excess of 240 hours calculated at the rate of time and one half (1-1/2).
3. *Use of Compensatory Time*
278. Non-"Z" designated employees shall be allowed to take any accrued compensatory time upon request to his/her supervisor. Requests for use of accrued compensatory time off shall not be unreasonably denied. At the employee's option, any accrued compensatory time off shall be paid at the end of the fiscal year. If the employee does not exercise such option, accrued compensatory time will be carried over to the next fiscal year.
4. *Pay out of compensatory time for non-"Z" class employees at termination of employment*
279. Any compensatory time earned but not used at the time of an employee's termination of employment shall be paid in cash.

Overtime for "Z" Employees

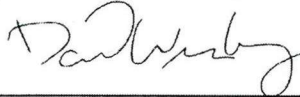
280. Employees occupying positions determined to be exempt from the Fair Labor Standards Act and designated by a "Z" shall not be paid for overtime worked but shall be granted compensatory time off at the rate of one-and-one-half times for time worked in excess of normal work schedules. Unused accrued compensatory time will be carried over to the next fiscal year.

Union's LBFO:

The Union rejects SFMTA Proposal #32 – Compensatory Time.

RULING: The Panel accepts the SFMTA's final offer on SFMTA Proposal #32 – Compensatory Time.

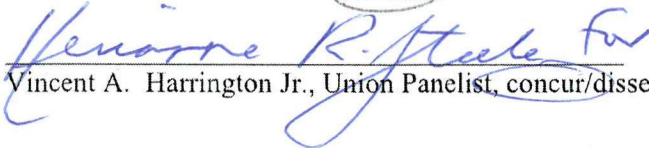
The SFMTA's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The SFMTA has met their burden to show the changes requested to the current MOU are necessary and in accordance with the need to meet the interests and welfare of transit riders, residents and other members of the public without unduly limiting the rights and welfare of the transit system employees.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

ISSUE #4 – Employees Not Eligible for Holiday Compensation, SFMTA Proposal #37

SFMTA's LBFO:

SFMTA Proposal #37 – Employees Not Eligible for Holiday Compensation

ARTICLE III – PAY, HOURS AND BENEFITS

F. HOLIDAYS

Employees Not Eligible for Holiday Compensation


299. Persons employed for holiday work only, or persons employed on a part-time work schedule which is less than twenty (20) hours in a biweekly pay period, or, except as provided in paragraph 361 (Benefits for Non-Permanent employees) of this Agreement, persons employed on an intermittent part-time work schedule (not regularly scheduled), or persons on leave without pay status ~~both~~ immediately preceding and or immediately following the legal holiday shall not receive holiday pay.

Union's LBFO:

The Union rejects SFMTA Proposal #37 - Employees Not Eligible for Holiday Compensation.

RULING: The Panel accepts the SFMTA's final offer on SFMTA Proposal #37 - Employees Not Eligible for Holiday Compensation.

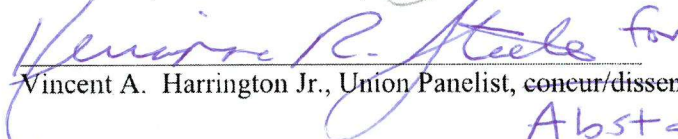
The SFMTA's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The SFMTA has met its burden to show the changes requested to the current MOU are necessary and in accordance with the need to meet the interests and welfare of transit riders, residents and other members of the public without unduly limiting the rights and welfare of the transit system employees.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent
Abstain (no part-time employees in this unit)

SMFTA's LBFO:

SFMTA Proposal #52 – Personnel Files

ARTICLE IV – GRIEVANCE PROCEDURE & PERSONNEL FILES

B. PERSONNEL FILES

460. Only one (1) official personnel file shall be maintained on any single employee. The official file shall be located in the SFMTA's personnel office unless another location is designated and the employee notified in writing. Each employee shall have the right to review the contents of his/her official personnel file upon request. Nothing may be removed from the file by the employee but copies of the contents shall be provided to the employee at his/her request. Copies in excess of 100 pages shall be at a charge of 10 cents per page.
461. With the written permission of the employee, a representative of the Union may review the employee's personnel file when in the presence of a departmental representative and obtain copies of the contents upon request. Copies in excess of 100 pages shall be at a charge of 10 cents per page.
462. An employee shall have the opportunity to review, sign and date any and all material to be included in the file except routine matters chronicling job and pay charges. The employee may also attach a response to such materials within thirty (30) days of receipt. All material in the file must be signed and dated by the author. The SFMTA may transmit documents to the employee at the employee's last known address by means of U.S. mail or hand-delivery, except disciplinary notification, which must be sent by certified mail when the employee is on leave.
463. With the approval of his/her appointing officer or designees, the employee may include material relevant to his/her performance of assigned duties in the file.
464. No action to impose discipline against an employee shall be initiated more than thirty (30) days from the date the employer knows of the conduct after diligent and timely investigation except for conduct which would constitute the commission of a crime. Initiation of discipline for the purposes of this provision is the date of the charging letter or notice. The discipline imposed may take into account conduct which is documented in the employee's personnel file or was the subject of a prior disciplinary action.

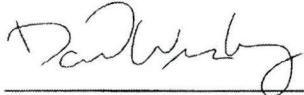
465. ~~Except for the specific disciplinary matters provided below, materials relating to disciplinary actions in the employee's personnel file which have been in the file three (3) years or more shall not be used. At the request of the employee, materials relating to disciplinary actions which are three (3) or more years old shall be removed, provided there has been no reoccurrence of the conduct on which the discipline was based. The performance evaluations are excluded from this provision.~~ At the request of an employee, materials relating to disciplinary actions which are three (3) or more years old shall be sealed to the extent permissible by law, provided that there has been no other discipline during that period. The envelope containing the sealed documents will be retained in the employee's personnel file and may be opened for the purpose of assisting the City or SFMTA in defending itself in legal or administrative proceedings. The sealed material shall not be used in disciplinary proceedings against the employee. This provision shall not apply to any discipline for violation of City or SFMTA Equal Employment Opportunity policies.
466. Materials relating to disciplinary actions for misappropriation of public funds or property; misuse or destruction of public property; the use or being under the influence of drugs or alcohol at work; acts which would constitute a felony; acts which present an immediate danger to the public health and safety; or acts of harassment or discrimination based on protected status which have been in the employee's personal file for five (5) years or more shall not be used. At the request of the employee, material relating to such disciplinary actions which are five (5) or more years old shall be removed; provided there has been no reoccurrence of the conduct on which the discipline was based.
467. Notwithstanding the above, if an employee believes his or her personnel file contains a personnel evaluation that negatively references employee's authorized and proper use of leave under the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), the employee should notify his or her department's Personnel Officer and/or Equal Employment Opportunity Officer, who shall review the matter and ensure any references to such use of FMLA or CFRA leave is removed from the evaluation.

Union's LBFO:

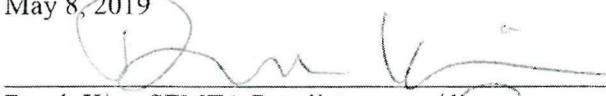
The Union rejects SFMTA Proposal #52 - Personnel Files.

RULING: The Panel accepts the Union's final offer on SFMTA Proposal #52 – Personnel Files.

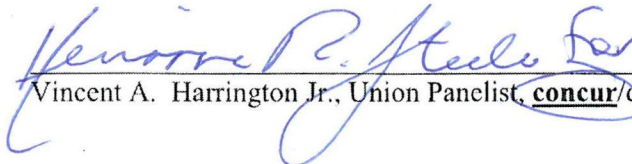
The Union's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board, including the other factors to be considered by the Board listed in the Charter 8A.104 (n). The Chairperson believes that the SFMTA has not shown a compelling need to change the current language in the MOU.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

ISSUE #6 – FMLA, SFMTA Proposal #57

SFMTA's LBFO:

SFMTA Proposal #57 - FMLA

ARTICLE VII – LEAVES OF ABSENCE & RETURN TO DUTY

C. FAMILY MEDICAL LEAVE

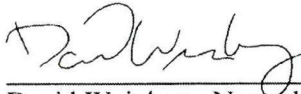
606. The parties acknowledge the obligation of the SFMTA to enforce the rules and regulations set forth in the Family Medical Leave Act and the California Family Rights Act. An employee may contest a FMLA decision through an EEO complaint or through the grievance process. The Union and the employee shall elect only one of these options. The election is irrevocable.

Union's LBFO:

The Union rejects SFMTA Proposal #57 - FMLA.

RULING: The Panel accepts the SFMTA's final offer on SFMTA Proposal #57 - FMLA.

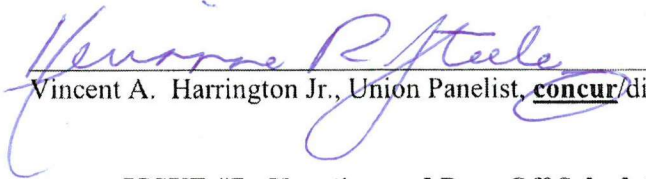
The SFMTA's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The SFMTA has met its burden to show the changes requested to the current MOU are necessary and in accordance with the need to meet the interests and welfare of transit riders, residents and other members of the public without unduly limiting the rights and welfare of the transit system employees. This proposal is intended to only apply to internal EEO complaints and does not limit an employees right to file with an external agency.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent



Vincent A. Harrington Jr., Union Panelist, concur/dissent

ISSUE #7 - Vacation and Days Off Scheduling, SFMTA Proposal #60

SFMTA's LBFO:

SFMTA Proposal #60 – Vacation and Days Off Scheduling

ARTICLE III – PAY, HOURS AND BENEFITS

S. VACATION

Vacation and Days Off Scheduling

397. Subject to the approval of the Appointing Officer, vacation periods and days off shall be scheduled by mutual agreement of the employee and his/her supervisor. In the event of a conflict where two or more employees desire the same vacation period or days off, the supervisor shall grant the preference of the more senior employee, after taking into account the needs of the service.

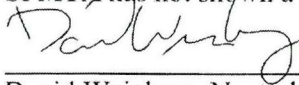
397a. Notwithstanding any other provisions of this Agreement, the City may require an employee on FMLA/CFRA leave to utilize accrued vacation in lieu of taking unpaid leave.

Union's LBFO:


The Union rejects SFMTA Proposal #60 - Vacation and Days Off Scheduling.

RULING: The Panel accepts the Union's final offer on SFMTA Proposal #60 – Vacation and Days Off Scheduling.

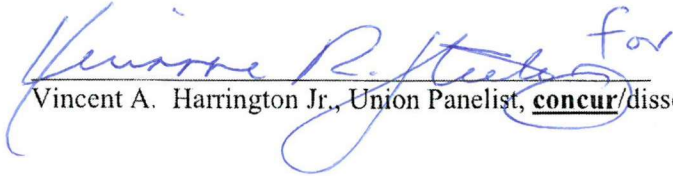
The Union's final offer most nearly conforms to the requirements listed in the Charter for consideration by the Arbitration Board. The Chairperson believes that the SFMTA has not shown a compelling need to change the current language in the MOU.



David Weinberg, Neutral Chairperson- Concur
May 8, 2019

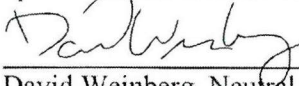


Derek Kim, SFMTA Panelist, concur/dissent

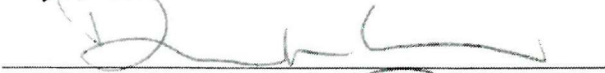


Vincent A. Harrington Jr., Union Panelist, concur/dissent

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



David Weinberg, Neutral Chairperson- Concur
May 8, 2019



Derek Kim, SFMTA Panelist, concur/dissent

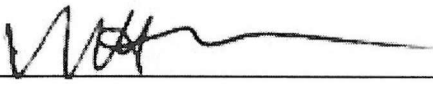
Wm. R. Steele For
Vincent A. Harrington Jr., Union Panelist, concur/dissent

1 record before the panel showed that other Agency employees receive premiums for weekend
2 work, and that the premium incentivizes employees to bid on those shifts. The Agency clearly has
3 the financial means to provide this compensation.

4 **V. DEPARTMENTAL SUPPLEMENTARY AGREEMENT (9131)**

5 I concur with the panel's selection of the Union's proposal 21, dealing with the
6 Departmental Supplementary Agreement regarding Class 9131 employees. The Agency did not
7 meet its burden to show any reason for the changes it ultimately proposed. Indeed it proposed
8 nothing on this issue until late in mediation. The Agency's LBFO regarding shift bidding was
9 ludicrous, giving it the right "for any reason" to decide not to conduct the twice annual bid
10 process and then engage with the Union in a fruitless meet and confer requiring "mutual
11 agreement" on the bid dates.

12 Dated: May 13, 2019

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15 VINCENT A. HARRINGTON, JR.
16 UNION PANELIST

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