

IN INTEREST ARBITRATION PROCEEDINGS
PURSUANT TO CHARTER SECTIONS A8.409 AND 8A.104(n)

International Brotherhood of	/	
Electrical Workers, Local 6,	/	
AFL-CIO	/	
Union	/	
	/	
and	/	OPINION AND AWARD
	/	
San Francisco Municipal	/	
Transportation Agency	/	
	/	
Employer	/	
_____	/	

Board Members

Christopher D. Burdick:	Neutral Chairperson
Emily Williams	SFMTA Board Member
John Doherty	Union Board Member

Appearances

On Behalf of The Union:
Peter W. Saltzman, Esq.,
Leonard Carder, LLP,
600 Harrison Street,
San Francisco, CA,
94102

On Behalf of the Employer
Erik Rapoport, Esq.,
Deputy City Attorney,
1390 Market Street, 5th Floor,
San Francisco, CA, 94102

I. INTRODUCTION

The impasse between the parties came on for interest arbitration on May 28, 2019, at the Union Hall at 55 Filmore Street, San Francisco, pursuant to Sections A8.409-4 and 8A.104(n) of the Charter (“Charter”) of the City and County of San Francisco (“City”).

Christopher D. Burdick, an attorney at law and arbitrator/mediator, had been previously agreed upon by the parties to act as the neutral Chairperson of the Arbitration Board. Emily Williams, Business & Administration Manager, Transit Division, San Francisco Municipal Transit Agency (“Agency”), was selected by the Employer as its Board Member; and John Doherty, Business Manager of the International Brotherhood of Electrical Workers, Local 6, AFL-CIO (“IBEW”, “Local 6” or “The Union”) was selected by the Union as its Board Member.

II. TENTATIVE AGREEMENTS

As anticipated in the Charter, the parties engaged in informal mediation sessions in April and May, 2019, reaching tentative agreements on the following:

City Proposals

- 1 Union Security
- 3 Gender Pronouns
- 4 Bulletin Boards
- 6 Jury Duty
- 8 Non Discrimination
- 9 Personnel Files
- 10 Probationary Period
- 12 Union Access
- 16 Paperless Pay
- 17 Grievance
- 25 Comp Time
- 30 Workwear
- 34 Apprenticeship
- 36 Reas. Accom.
- 42 Signal Shop

Union Proposals

- 1 Entry at 5th Step
- 6 Acting assignment
- 15 Safety Glasses
- 18 Lead Electrician
- 19 Hours between shifts
- 20 Overtime at overhead lines

- 24 Tuition reimbursement
- 28 Night duty
- 35 Seniority determination
- 36 Overtime eligibility
- 40 Equity

Tentative Agreement on Wages

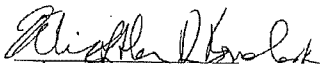


Side letter for 7345 Electricians

Tentative Agreement on Union/SFMTA Relations Committee

Revised Attachment 7 (Divisions, Shift Bidding, Transfer Bids, Vacancy Bidding)

The Board approves each of these tentative agreements and directs their inclusion into the new Collective Bargaining Agreement for the 2019-2022 term.

ADOPTED:

Christopher Burdick, Chair	- I concur	
Emily Williams, SFMTA Member	-- I concur/dissent	
John Doherty, Union Member	- I concur/dissent	

III. LBFOs AND RELEVANT CHARTER PROVISIONS

At the conclusion of the proceedings, two matters remaining in dispute were submitted to the Board for final and binding determination: the parties' last, best and final offers on Sustainable Streets Overtime and a Mobile Crane Premium.

Under the Charter, unresolved differences in negotiations between the City and a recognized employee organization which persist to the point of impasse are submitted to final and binding interest arbitration, to be heard and decided by a three-member board. The parties select a neutral Chairperson, the City appoints one member thereto, and the union appoints its member.

Charter Section A8.409 requires the arbitration board to decide each issue in dispute by

“selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence submitted during the arbitration most nearly conforms to those factors traditionally taken into consideration in the determination of ages, 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 of conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of the 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 revenues by enhancements or other means; budgetary reserves; and the City’s ability to meet the costs of the decision of the arbitration board.”

Charter Section 8A.104(n), applicable to SFMTA, further provides:

“For employees whose wages, hours and terms and conditions of employment are set by the Agency, the Agency shall exercise all powers of the City and County, the Board of Supervisors, the Mayor, and the Director of Human Resources under Sections A8.404 and A8.409. The mediation/arbitration board set forth in Section A8.409-4 shall consider the following additional factors when making a determination in any impasse proceeding involving the Agency: the interests 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. Notwithstanding the timelines described in Section A8.409-4, to be effective the beginning of the next succeeding fiscal year, all collective bargaining agreements must be submitted to the Board of Directors no later than June 15 for final adoption on or before June 30.”

This Charter interest arbitration system is referred to in the labor world as “issue-by-issue, baseball arbitration.” The Charter’s arbitration board may only select the offer on each disputed issue made by one party. The Board may not modify or alter, to its

choosing, any proposal but may approve only one of the competing proposals on each subject still at impasse.

IV. SUSTAINABLE STREETS OVERTIME

The last, best, and final offer (“LBFO”) of the Agency was as follows:

ARTICLE VI – SUSTAINABLE STREETS DIVISION

VIA WORKING CONDITIONS AT THE SUSTAINABLE STREETS DIVISION

Overtime:

~~404. The following provisions pertaining to Weekend, Holiday, and Regular Overtime Assignments shall apply to covered employees at the Sustainable Streets Division:~~

~~Regular Overtime Assignments:~~

~~405. Applies to non-weekend, non-holiday overtime. Regular overtime offered to employees with least number of O.T. hours. Regular O.T. is generally voluntary unless there are not volunteers in which case, regular O.T. may be assigned by inverse seniority. Refusals of O.T. not counted to determine eligibility for an offer of regular O.T.; however, weekend and holiday O.T. is counted to determine eligibility for an offer of regular O.T.~~

404. (a) The SFMTA shall generate a list of eligible employees by seniority each fiscal year for overtime purposes. At the beginning of each fiscal year, overtime shall be initially offered by going down the seniority list. After SFMTA has gone through the seniority list once, SFMTA will thereafter offer overtime to the employee with the least number of accrued overtime hours. If that employee refuses the overtime offer, SFMTA will offer overtime to the employee with the next lowest number of accrued overtime hours until all overtime assignments are filled. Refusals of overtime are not counted as accrued overtime hours for the purpose of overtime distribution. If SFMTA reaches the end of the list of employees based on accrued overtime hours before all overtime assignments are filled, then the SFMTA will assign overtime by reverse seniority. SFMTA shall update the list of employees based on number of accrued overtime hours at least once every pay period, indicating the cumulative number of overtime hours worked by each employee for the fiscal year. This list shall be posted on the bulletin board by the following pay day and, upon request, the traffic signal shop shall provide the list to the Union within five (5) working days. Any hours documented as refusals shall be listed for informational purposes only.

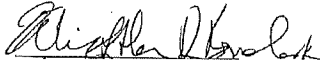
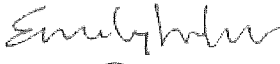

404. (b) Scheduled overtime assignments shall be posted bi-weekly on the bulletin board, including all assignments in future weeks. When new work orders come in, or as additional shifts become available, they shall be updated to the posted availability within 24 hours, or as soon as practicable.
404. (c) When unexpected but immediate coverage is required, the SFMTA will first call the employee(s) assigned to pager assignment. If additional coverage is needed, management shall make reasonable efforts to contact employees utilizing the list. Management shall document the date and time of the attempt to contact employees, and shall provide the documentation to the Union upon request within five (5) working days.
404. (d) The parties agree that management has an obligation to make reasonable efforts to provide opportunities for overtime for all employees based on the lowest number of accrued overtime hours. However, the parties recognize that strict adherence to offering overtime to the employee with the lowest number of accrued overtime hours may not be practicable in all circumstances. Therefore, under the following circumstances, the SFMTA may assign overtime based on operational need:
404. (e) When overtime is necessary in order to complete a job, the SFMTA may continue persons assigned to the work until its completion. If the assignment continues past the end of the work day, unless otherwise provided in this Section, the SFMTA shall offer that overtime based on subsection (a) of this Section. If the SFMTA believes an exception is warranted based on extenuating circumstances, it may assign the overtime based on operational need and must notify the Union when this occurs. Provided, however, that if this exception denies any employee an opportunity for overtime based on the provisions of sub-paragraph (a), the parties agree to meet to review the SFMTA's decision to assign work past the end of an employee's work day, upon request of either party.
404. (f) The Sustainable Streets pilot project language set forth in subsection (g) below shall expire on the last day of this Agreement:
404. (g) Sustainable Streets pilot project for exceptions warranting overtime assignments out of sequence: The parties recognize that strict adherence to offering overtime to the employee with the lowest number of accrued overtime hours may not be practicable in all circumstances. Therefore, under the following circumstances, the SFMTA may assign overtime based on operational need:

- 404g (i) When overtime is worked in connection with a special project, overtime for that project may be restricted to the complement of employees assigned to that project; provided however, that SFMTA shall notify the Union when this situation occurs. If the terms of this paragraph result in complaints regarding the distribution of overtime opportunities, the parties agree to meet to review such complaints, on a case by case basis, upon request of either party.
- 404g (ii) When an employee must attend to a work task the next day that cannot be substituted by another employee. In such cases, SFMTA may skip the employee in offering overtime provided, however, that if this exception denies any employee an opportunity for overtime, the parties agree to meet to review the work task assignment, upon request of either party.
- 404g (iii) When unexpected but immediate coverage is required, and the employee assigned to pager assignment is unable to respond within one hour, or within a shorter response time when required due to an emergency situation, the SFMTA may assign the overtime work based on operational need and then notify the Union when this situation occurs.
- 404g (iv) The parties agree that this pilot program will not be used to deny overtime opportunities to any employee at Sustainable Streets, and the SFMTA agrees to make reasonable efforts to offer overtime assignments based on provisions of sub-paragraph (a) whenever practicable. At least 24 hours in advance of each meeting of the Union/SFMTA Relations Committee, SFMTA shall provide the Union with data showing the overtime hours worked over the preceding three (3) months by each employee in the shop to confirm compliance with this section.

The Union opposed the Agency's LBFO, proposing instead to retain the status quo, however, the SFMTA's proposal regarding the distribution of overtime at Sustainable Streets is fair, reasonable, and based on credible evidence. The proposal helps ensure that overtime at the Sustainable Streets division will be distributed in a fair and efficient manner based on the lowest number of accrued overtime hours, while at the same time giving SFMTA management some flexibility to assign overtime for special projects, end of day work, and when unexpected but immediate coverage is required. The proposal conforms to those factors traditionally taken into consideration in the determination of ages, hours, benefits and terms and conditions of public and private employment, including the terms of conditions of employment of employees performing similar services and of other employees at SFMTA, and SFMTA's ability to efficiently

and effectively tailor work hours and schedules for transit system employees to the public demand for transit service. Therefore, based on the preponderance of the evidence and the relevant criteria of Charter sections 8A.104(n) and A8.409-4(d), the Board adopts the Agency's "Sustainable Streets Overtime" LBFO.

ADOPTED:

Christopher Burdick, Chair - I concur 
Emily Williams, SFMTA Member - I concur/dissent 
John Doherty, Union Member - I concur/dissent 

V. MOBILE CRANE PREMIUM

The last, best, and final offer ("LBFO") of the Union was as follows:

Mobile Crane Premium

151a. Effective July 1, 2019, employees required to possess a crane certification (over 25 feet or 15,000 pounds) shall receive a premium of one dollar and seventy-five cents (\$1.75) for all hours worked actually operating a vehicle mounted boom crane with a rated capacity of over 25 feet or 15,000 pounds. To be eligible for this premium, employees must possess, and have in their personnel file, a valid National Commission for the Certification of Crane Operators (NCCCO) certification.

The Agency opposed the Union's LBFO, proposing instead to retain the status quo, however, the Union's proposal is fair and reasonable. It establishes a modest premium for mobile crane work in order to provide an incentive for bargaining unit members to obtain certification and take on work that is important and often high-risk. The applicable Charter factors set forth in Sections A8.409-4(d) and 8A.104(n) support the proposal, in particular the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco (employees in other trades who work on boom cranes receive a premium), the health and safety of employees (not all employees working on boom cranes are currently certified), and the Agency's ability to meet the costs of the decision (SFMTA has indicated that the cost of the proposal is small). Therefore, based on the preponderance of the evidence and the relevant criteria of Charter sections 8A.104(n) and A8.409-4(d), the Board adopts the Union's "Mobile Crane Premium" LBFO.

ADOPTED:

Christopher Burdick, Chair ~~I concur~~



Emily Williams, SFMTA Member -- I concur/dissent



John Doherty, Union Member ~~I concur/dissent~~



VI. AWARD

In light of the discussion and analysis set forth above, the Union and City proposals are accepted or rejected as described above.

Christopher Burdick, Chair

Emily Williams, SFMTA Member

John Doherty, Union Member

May 31, 2019