

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.10
(ID # 23563)

MEETING DATE:
Tuesday, March 05, 2024

FROM : HUMAN RESOURCES:

SUBJECT: HUMAN RESOURCES: Take Action on Advisory Arbitration Opinion as required by the Memorandum of Understanding (MOU) between the County of Riverside and Laborer's International Union of North America (LIUNA), Local 777, All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Accept the advisory arbitration opinion of William S. Schilling dated December 22, 2023, in the grievance related to an Information Technology working out of class filed by LIUNA.
2. Accept the advisory arbitration opinion of Arbitrator David B. Hart dated October 18, 2023, in the grievances related to call-back filed by LIUNA.

ACTION: Policy

Sarah Franco

Sarah Franco, Assistant County Executive Officer 2/28/2024

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: March 5, 2024
xc: H.R.

Kimberly A. Rector
Clerk of the Board

By: *Naomy Li*
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	23/24

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Memorandum of Understanding (MOU) between the Laborer’s International Union of North America, Local 777 (LIUNA) and the County of Riverside contains a provision that provides for advisory arbitration as part of the grievance resolution procedure. Per the terms of the MOU, after receipt of an advisory arbitration opinion, the Board is to accept, reject, or accept in part the decision and reject the rest, without further testimony from either party. For ease of reference, the applicable language from the MOU is included here:

Article XIII Grievance Procedure, Section 13(E):

The grievance shall thereafter be subject to advisory arbitration and decision by the Board of Supervisors in the manner prescribed in Section 14. The Board of Supervisors shall either accept or reject the arbitrator’s decision, or accept part of the decision and reject the rest, without further testimony from either party. If the Board rejects all or part of the arbitrator’s decision, the Board shall state its reasons for rejection. The decision of the Board of Supervisors shall be final. Unless mutually agreed, proceedings conducted at any step of the grievance procedure shall be private except proceedings before the Board of Supervisors.

There are two grievances at issue. The first was a working out of class grievance for the Information Technology Department. On December 2, 2019, LIUNA filed a grievance alleging Larry Horne was performing duties outside of the scope of his duties as an IT User Support Technician II.

The language at issue from Article V Pay Practices, Section 9 Conformance to Plan of the 2020-2024 Memorandum of Understanding (MOU) between LIUNA and the County of Riverside, is as follows:

9. Conformance to Plan

No regular employee shall be assigned to exercise the powers or perform the duties of any classification other than their own classification for an accumulated period of four hundred and eighty (480) hours or more during the life of this MOU. Such accumulated hours of such assignment(s) shall be credited toward qualifying experience for possible

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

promotion only when such assignments have been authorized or verified by the Department Head or designee in writing.

The arbitrator's decision was received by the County on December 22, 2023, and was in favor of the County. After considering the evidence, testimony of the witnesses and closing arguments, the Arbitrator determined the grievant failed to meet its burden of proof sufficient to convince the Arbitrator that the County violated Article V, Section 9 of the current MOU. The Arbitrator denied the grievance.

We respectfully recommend that the Board of Supervisors act on the advisory arbitration opinion and accept Arbitrator William S. Schilling's decision dated December 22, 2023.

The second grievance involved the interpretation and application of the call-back provisions in the 2018 Side Letter to the 2012-2016 MOU between LIUNA" and the County. Specifically, how the County applied call-back pay for Animal Control Officers ("ACO") working at the Department of Animal Services. The Union argued that the call-back provisions entitle ACOs to a separate two (2) hour overtime credit each time they are called back physically, even if another physical call-back occurs within the same two (2) hour period of the first physical call-back. LIUNA also argued that the call-back provisions entitle ACOs to a separate two (2) hour credit when they are called back to respond remotely, and subsequently respond to a physical call-back within the same two (2) hour period of the remote response.

The language at issue from the 2018 Side Letter states, in pertinent part, the following:

B. Minimum Overtime on Call-Back

1. Call-Back – Physically Reporting to a Worksite. Except as hereinafter otherwise provided, an employee who is physically called back to work to meet an emergency on an overtime basis, whether or not he is in a standby call duty status, shall receive minimum credit for two (2) hours' work.
2. Call-Back – Responding Remotely. An employee who is called to perform work but is able to complete the work required without the employee having to physically report to a worksite, whether or not he/she is on call duty status, shall receive minimum credit for two (2) hours work at the overtime rate. If an employee should complete the work required, and subsequently be recalled during the minimum credit period, no additional compensation shall be paid for until minimum credit period has exhausted.

The Arbitrator's decision found that if the parties had meant for both types of call outs to be paid the same, they both would be in the same section of the agreement. Since the two types of call outs are in two separate sections of the agreement, the rates of pay are different. The

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STATE OF CALIFORNIA**

Arbitrator's award is to prospectively apply the side letter to physical call backs granting a credit of two (2) hours for each physical call back. Additionally, the Arbitrator's award is to prospectively apply the side letter to call backs that involve a combination of remote and physical responses, thus granting a credit of two (2) hours for the remote call back and a credit of two (2) hours for the physical call back.

We respectfully recommend that the Board of Supervisors act on the advisory arbitration opinion and accept Arbitrator David B. Hart's decision dated October 18, 2023.

Impact on Residents and Businesses

This request does not have a direct impact on residents and businesses.

Additional Fiscal Information

N/A

ATTACHMENTS:

**ATTACHMENT A – Arbitrator's Findings Conclusion Award dated December 22, 2023
– Working Out of Class**

**ATTACHMENT B – Arbitrator's Findings Conclusion Award dated October 18, 2023 –
Call-Back**

**ATTACHMENT C – Side Letter to the 2012-2016 MOU between LIUNA and the County
of Riverside Regarding Call-Back Pay**

 
Alonzo Barrera, Principal Management Analyst 2/28/2024 Dave Rogers, Chief Administrative Officer 2/28/2024

WILLIAM S. SCHILLING

38180 DEL WEBB BLVD., PMB 107, PALM DESERT, CA 92211
TEL. 626-641-6464 • WSCHILLING@THYMOS.US

In the Matter of Arbitration Between,

LIUNA Local 777
Union

And,
County of Riverside
Employer.

Re: Horne – Work out of Class

Arbitrator’s Opinion and
Award

William S. Schilling, Arbitrator

The parties selected the Arbitrator pursuant to the terms of their Memorandum of Understanding 2012-2016 (JX-1)¹. The matter was heard on July 26, 2023, at Riverside County Administrative Offices in Riverside, California. The Grievant was present, and the parties were afforded the opportunity to examine and cross-examine witnesses under oath, introduce relevant evidence, and propound arguments in support of their respective positions. The hearing record was closed, and the matter submitted for award as of December 4, 2023, following the receipt and exchange of the post-hearing briefs.

APPEARANCES

For the Union:
Jaime Gonzalez
Arbitration Specialist
LIUNA Local 777
4000 10th Street
Riverside, CA 92501

For the Employer:
John Z. LaCrosse
Attorney
Liebert Cassidy Whitmore
550 West C Street, Suite 620
San Diego, CA 92101

¹ Union, Company, and Joint exhibits are referenced as UX, CX, and JX.

BACKGROUND

Larry Horne was hired by the County of Riverside on January 21, 2016, as a temporary IT User Support Technician II, and assigned to work in the newly created Digital Equity Program (DEP). This assignment continued once he was hired as a permanent employee on November 8, 2017, and lasted until December 2, 2019, when he was removed from that assignment.

The Digital Equity Program was created to manage the County's refurbishment and donation of surplus computers and related technology equipment. Between 2017 and 2019, the DEP was run by Tom Mullen, the Chief Broadband Officer and Nora Valenzuela, an IT manager. Mr. Horne reported directly to Nora Valenzuela. It was under her direction that the operational policies and procedures for the DEP were first developed. It is the contention of Mr. Horne that those policies and procedures were developed by Ms. Valenzuela relying heavily on his work. He further contends that the nature of this work was outside the job description of the User Support Tech II classification. Additionally, he contends that his continuing duties until December 2019 were also outside those of the User Support Tech II (UST II) (JX-2, tab 3) classification and should be classified as User Support Tech III (UST III) (JX-2, tab 4) or Supervising User Support Tech (Supervising UST) (JX-2, tab 5).

ISSUES

Whether the grievant, Larry Horne worked outside his class as an IT User Support Tech II as either an IT User Support Tech III or IT Supervisor User Support Tech (UST) in violation of Article V, Section 9 of the MOU?

And, if so, what is the appropriate remedy?

STIPULATIONS

The parties stipulated that the case was properly before me for decision.

RELEVANT LANGUAGE

ARTICLE V – PAY PRACTICES

Section 9. Conformance to Plan

No regular employee shall be assigned to exercise the powers or perform the duties of any classification other than their own classification for an accumulated period of four hundred and eighty (480) hours or more during the life of this MOU. Such accumulated hours of such assignment(s) shall be credited toward qualifying experience for possible promotion only when such assignments have been authorized or verified by the Department Head or designee in writing.

A. Procedure

1. When, in the opinion of a Department Head, it is necessary for an employee to assume the duties and responsibilities of a higher-level position on an ongoing basis, the employee shall be advised, in writing, of the date on which such duties shall begin.
2. Within ten (10) working days of the completion of the four hundred and eighty (480) hours described in (A) above, the Department Head or designee shall meet with the employee to inform him/her whether they will continue to perform the higher level duties or resume the duties of their regular position. In the event the employee resumes their regular duties, no further action is required. In the event the employee is directed to continue performing the higher-level duties, one of the following shall occur:
 - a. If the employee is performing the duties of an existing higher level vacant position, the Department shall immediately request that Human Resources conduct an examination to fill the vacancy. The employee, if qualified, shall be promoted and receive a salary adjustment pursuant to applicable provisions of this MOU. If the employee is not qualified for the position, or a more qualified employee is selected for appointment to the position, the employee shall be returned to his/her former position and be compensated for any hours worked at the higher level beyond the four hundred and eighty (480) hours referenced above, and the time of his/her return to the former assignment.
 - b. If the employee is performing the duties of a position for which there is no existing classification, the Department shall request an expedited reclassification study by the Human Resources Department. If, upon completion of the study, Human Resources determines that the duties and responsibilities of the position warrant a reclassification, the position shall be reclassified appropriately and the employee, if qualified, shall be appointed pursuant to applicable provisions of this MOU. If it is determined that the employee is not qualified, or a more qualified employee is selected for appointment to the position, the employee shall be returned to his/her former position and be compensated at a rate 5.5% above the current rate of pay or the bottom step of the new classification, whichever is greater, for any hours worked at the higher level beyond the four hundred and eighty (480) hours referenced above, and the time of his/her return to the former assignment.

ARTICLE XIII – GRIEVANCE PROCEDURE

Section 14. Advisory Arbitration

E. The Arbitrator shall have no power to alter, amend, change, add to or subtract from any of the terms of this MOU, but shall determine only whether or not there has been a violation of the MOU in respect to the alleged grievance and remedy. The Arbitrator's decision shall be based solely upon the evidence and arguments presented to him by the respective parties.

F. ...

If the arbitrator sustains the grievance, a remedy shall be fashioned that does not conflict with the provisions contained in this MOU.

SIDE LETTER OF AGREEMENT
BETWEEN
COUNTY OF RIVERSIDE
AND
LIUNA

This Side Letter of Agreement ("Agreement") between the County of Riverside ("County") and the Laborers International Union of North America, Local 777 (LIUNA) (collectively "Parties") is entered into with respect to the following:

WHEREAS, the Parties have previously reached an agreement on a Memorandum of Understanding (MOU) with a term from July 1, 2012 to June 30, 2016; and

WHEREAS, the Parties reached a tentative agreement amending Articles I (Term), V (Pay Practices), XIII (Vacation), XXI (Flexible Benefit Program), and XXXII (Fairness Clause) covering the term of 24 months from the first day of the start of the pay period following the Board of Supervisors adoption on March 26, 2019; and

WHEREAS, the Parties wish to add to their existing agreements this side letter of agreement covering "working out of classification grievances" that will go into effect and will be incorporated into their MOU once the Agreement is executed; and

WHEREAS, the scope of this Agreement is limited to the handling of "working out of classification" grievances as specifically addressed by the terms herein. The parties retain all other rights and obligations not expressly compromised by this Agreement;

WHEREAS, the Parties agree to modify Article XIII (Grievance Procedure) of the Parties' MOU as reflected below:

B. PROCEDURE

Section 13. Steps. The following procedure shall be followed by an employee submitting a grievance petition, except for Conformance to Plan grievances as described further below:

...

F. The parties mutually agree to initiate the processing of those grievances that contend that an employee is not correctly currently classified, otherwise commonly referred to as “working out of classification grievances” at Step 2 of the existing grievance procedure. Therefore, a grievant shall submit and file a working out of classification grievance directly with the County’s Human Resources Department. All other types of grievances will continue to start at the informal and first step of the grievance procedure as currently set forth and defined in the MOU.

Accordingly, a grievant shall file a written working out of classification grievance petition within fifteen (15) working days after the occurrence of the circumstances giving rise to the grievance to the Human Resources Department. Within (15) working days after submission of the grievance petition, the Human Resources Director, or a designee, shall meet with the grievant and the grievant’s representative, if any. Additionally, a member of the Human Resources Classification and Compensation Division and an available Department representative with knowledge and familiarity of the grievant’s job functions, duties and assignments will also attend this meeting. No later than fifteen (15) working days thereafter, the Human Resources Director, or designee, shall render a written decision. For those “working out of classification grievances” that identify a specific existing classification to remedy the grievance, the written decision will either grant or deny the grievance.

ANALYSIS AND OPINION²

There is a process within the County of Riverside to review classifications of employees when there is a question about whether they are properly classified. That process is called a Classification Study. The first step is for a Department to go to Human Resources and request such a study. At that point, an Analyst from HR is assigned to that project. Then the employee completes a Position Description Questionnaire (PDQ). Once the PDQ is completed it is reviewed by the employee’s Supervisor. If the Supervisor agrees it is accurate, he/she signs off on it. If there is no agreement, modifications are made until an agreed upon PDQ is generated. The next step is for the HR Analyst to do a job audit with the employee and review the PDQ responses. Finally, a job classification determination is made, and the process is complete.

² To concentrate on the determinative and avoid the cumulative, the analysis does not summarize all evidence or contentions raised by the parties and considered by the Arbitrator.

In September of 2017, Mr. Horne completed a PDQ. It was never signed by his Supervisor. Additionally, at that time he was classified as a Temporary Assistance Program (TAP) employee. TAP employees were not covered by the MOU. Perhaps that is why the Classification Study proceeded no further. One can only speculate, as there was no explanation offered into evidence. It was not until 2020 that a complete Classification Study was done. The result was that the grievant was properly classified for the work he was doing. However, that Study took place after Mr. Horne had left the DEP, so I do not consider it relevant.

Since there is no Classification Study to rely on for determining what classification was appropriate for the work Mr. Horne was doing, we must rely on other evidence and testimony. First, a look at the job specifications for each of the classifications at issue is appropriate. There are similarities amongst the three classifications as they are in the same classification series. The key differences are as follows. UST IIs are expected to perform the full range of duties “with little supervision or guidance” (JX-2, tab 3). UST IIIs are expected to provide project “oversight to subordinate staff” and perform the “most complex assignments that require extensive knowledge and proficiency” (JX-2, tab 4). The UST II job specifications (JX-2, tab 3) further differentiates it from a UST III (JX-2, tab 4) “in that the latter requires incumbents to possess and use expertise-level technical and analytical skills on a regular basis.” There are even greater differences between the UST II (JX-2, tab 3) and the Supervising UST (JX-2, tab 5). A Supervising UST is expected to perform the full scope of supervision, from monitoring and evaluating subordinate staff to approving timesheets and issuing formal disciplinary action.

In a case of this type, the burden of proof rests with the grievant, Larry Horne. He and his representative are tasked with proving to the satisfaction of the Arbitrator that the MOU was violated. There was little, if any, documentation provided by the grievant to support his position. He relied almost entirely on his own testimony about what he did while working in the DEP. The one document in evidence was the PDQ from 2017 (JX-2, tab 8, p. 192-199). However, this is a rather self-serving document that he completed without review of his Supervisor. And, surprisingly, during the hearing, Mr. Horne provided no testimony to explain what he wrote on that document.

County witness Bechara Fayed (aka Bob), IT Manager IV, who initiated the PDQ process in 2017 (UX-1, p. 3), testified specifically about the integrity and accuracy of that PDQ. He stated that the grievant's duties were purely task oriented, not complex. Additionally, Nora, the grievant's immediate Supervisor, was performing the duties listed. And, on JX-2, tab 8, p. 194, the boxes checked off were NOT (emphasis added to reflect the witness' testimony) accurate. On page 195 of that document, the list of names allegedly being supervised were volunteers, not employees. On page 198 of the same document, the entire list of duties was being performed by Tom Mullen and Nora Valenzuela.

County witness Ignacio Melgoza, who had overall supervision responsibility for the DEP and the grievant since 2018, added testimony regarding the PDQ. He stated that the oversight of the volunteers wasn't supervision at all. It was cross training only. Additionally, he testified that Nora handled the entire administration of the DEP.

One specific Mr. Horne stated in his testimony was a reference to a performance evaluation he had received. In that document, was a reference to the grievant as a "lead". (JX-2, tab 8, p. 186). Mr. Horne testified that the term "lead" supported his position as being a UST III or Supervising UST. It turns out Mr. Melgoza was the Supervisor who completed that evaluation. He testified that he referred to the grievant as a lead simply because the grievant took more initiative than the other UST II assigned to the DEP. It did not demonstrate that he worked out of his classification.

With respect to the grievant's contention that he also qualified as a Supervising UST, there was no testimony or evidence to support that he ever supervised anyone while in the DEP.

AWARD

Having heard, read, and carefully reviewed the incredible volume of evidence, the testimony and the closing arguments in this case, and considering the above Analysis and Opinion, the Arbitrator finds the following with respect to the issue.

Whether the grievant, Larry Horne worked outside his class as an IT User Support Tech II as either an IT User Support Tech III or IT Supervisor User Support Tech (UST) in violation of Article V, Section 9 of the MOU?

The answer is no. The grievant failed to meet its burden of proof, sufficient to convince the Arbitrator that there was a violation of Article V, Section 9 of the MOU. The grievance is therefore denied.

William S. Schilling,
Arbitrator
Date: December 22, 2023
Palm Desert, California

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In the Matter of the Arbitration

-between-

COUNTY OF RIVERSIDE

EMPLOYER

-and-

LIUNA LOCAL 777

UNION

FINDINGS

CONCLUSION

AWARD

DAVID B. HART
ARBITRATOR

HEARING HELD

July 6, 2023

Riverside, California

REPRESENTING:

COUNTY OF RIVERSIDE

Marek Pienkos, Esq.
Liebert, Cassidy Whitmore

REPRESENTING:

LIUNA LOCAL 777

Jaime Gonzalez, Labor Representative
Laborers International Union of North America

1 JURISDICTION

2 This Arbitration arises pursuant to the Memorandum of Understanding
3 (hereinafter may be referred to as the “Agreement”) between the County of Riverside
4 (hereinafter may be referred to as the “Employer”) and LIUNA Local 777
5 (hereinafter may be referred to as the “Union”).

6 On or about January 2, 2020, and December 13, 2021, Grievances were filed
7 by the Union on behalf of individuals who grieved the misapplication of the side letter
8 outlining call back language.

9 Unable to reach a settlement, David B. Hart was selected by the parties to act
10 as an impartial Arbitrator and empowered him to render a decision in accordance with
11 the Agreement.

12 The hearing was held on the date set forth above and the parties had ample time
13 and opportunity to present evidence including witnesses, stipulations and documents.

14 The parties submitted written briefs which were received by the Arbitrator on
15 or before October 5, 2023.

16 The parties stipulated to the following issue(s):
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19 ISSUE(S)
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21 Did the County violate the 2018 Side Letter to the 2012-2016 MOU between LIUNA Local 777 and
22 the County of Riverside amending Article IV, Workweek, Overtime and Premium Pay, Section 3,
23 Premium Pay, A-Standby Professional Call Duty and B-Minimum Overtime on Call Back provisions
24 of the MOU, **when:**

- 25 1. **The County did not pay a separate two (2) hour credit to the Animal Control Officers**
26 **when they were physically called back, and subsequently received another physical call-back**
27 **within the same two (2) hour period of the first physical call-back, and if so, what is the**
28 **appropriate remedy?**

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2. The County did not pay a separate two (2) hour credit to the Animal Control Officer Cole Woods, when he was called-back to respond remotely, and subsequently called back for a physical response within the same two (2) hour period of the remote response, and if so, what is the appropriate remedy?

THE GRIEVANCE/BACKGROUND

THE FIRST QUESTION BEFORE THE ARBITRATOR THAT IS RAISED BY GRIEVANCE No. L1920-027 FILED on January 2, 2020

Did the County violate the 2018 Side Letter when the County did not pay a separate two (2) hour credit to the Animal Control Officers when they were physically called back, and subsequently received another physical call-back within the same two (2) hour period of the first physical call-back, and if so, what is the appropriate remedy?

THE SECOND QUESTION BEFORE THE ARBITRATOR THAT IS RAISED BY GRIEVANCE No. L2122-005 FILED ON December 13, 2021

Did the County violate the 2018 Side Letter when the County did not pay a separate two (2) hour credit to the Animal Control Officer Cole Woods, et al. when called-back to respond remotely, and subsequently called back for a physical response within the same two (2) hour period of the remote response, and if so, what is the appropriate remedy?

1 two (2) hour minimum credit period during negotiations. Rather, Mr.
2 Gordo, LIUNA's principal witness, claimed that the intent was to pay
3 employees so, but admitted that he had no documentation to support
4 his stance. In contrast, the County supported its stance with not only
5 testimony, but also contemporaneous documentation evidencing that
6 the intent was to interpret both call-back provisions the same. Without
7 an evidence that either party intended to adopt LIUNA's multiple
8 overtime credit interpretation of the Side Letter, LIUNA has not met
9 its burden and the grievances must be denied.

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15 **UNION POSITION**
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18 It is the Union's argument that there are specific instructions that have
19 been applied by the County to remote call backs that are
20 combined with physical call backs for LIUNA members that are not
21 included in the side letter with LIUNA and that should not have been
22 applied.

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25 The Union believes that the County's practice of applying to LIUNA
26 members language that is not in the provisions of the physical call
27 back in the side letter, a practice that is challenged by the first
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1 grievance, and the County's additional practice of applying to LIUNA
2 members the instructions prescribed by the language in an internal
3 County memorandum regarding the combining of both physical and
4 remote call backs that is not in the side letter, a practice that is
5 challenged by the second grievance, are the crux of the deviation from
6 what was negotiated by the County's representatives with LIUNA and
7 the origin of the practices that the two grievances before the arbitrator
8 seek to correct.
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11 ANALYSIS

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14 An Arbitrator is charged with responsibility for resolving all disputes
15 submitted to him for determination, both substantive and procedural, in a manner
16 consistent with the facts as disclosed by the evidence, and in conformity with
17 applicable provisions of the Agreement. It is not the function of the Arbitrator to
18 evaluate , approve , or criticize any of the terms and conditions of employment
19 which the parties have negotiated through the meet and confer process and as
20 appear in their Agreement or in the Rules and Regulations which the parties abide
21 by. The Arbitrator must assume that the parties deemed the various subject matters
22 dealt with in their Agreement as desirable, and workable. The Arbitrator's
23 conclusions and findings must stem from a fair and reasonable construction and
24 application of the contract or Rules and Regulations. Further, the Arbitrator must
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1 assure that the Decision and Award shall uphold the integrity of the Agreement and
2 Rules and Regulations and draw their essence from the language of the Agreement
3 as negotiated by the parties. The Arbitrator's responsibilities as well as the
4 restrictions upon his authority have been recognized by the parties and are
5 embedded in the clear and unambiguous contract language which enjoins the
6 Arbitrator from changing, amending, or adding to the provisions of the Agreement.
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9 There are those who believe that Arbitrators should play an expanded role in
10 hearings including "legislating from the bench", so to speak. Most Arbitrators
11 however, including the Arbitrator in the instant case, view their role as limited.
12

13 Arbitrator Samuel Chalfie in Lorillard 87 LA 507, 512 (1986) defined the
14 limits of arbitral authority as follows:

15 **"The Arbitrator's function is not to rewrite the Agreement and**
16 **certainly it is not to suggest, imply nor to inform the parties**
17 **of what changes should be effected, renegotiated or changed even**
18 **if his sense of justice and fairness so dictate, or even if he believes**
19 **the Agreement contains inequities. Nor can the Arbitrator allow**
20 **the economic consequences of an award to influence him in his**
21 **ultimate decision. The Arbitrator's award must derive its essence**
22 **from the Agreement, and tell the parties what they can or cannot do**
23 **inside of that Agreement."**

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26 The Arbitrator in the instant case after careful analysis of the issue(s) at
27 hand finds that if the parties had meant for both types of callout to be paid the
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1 same, they both would be in the same section of the agreement. The instant case
2 finds the two types of callout in two separate sections of the agreement. Therefore
3 the rates of pay are different.
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5 The Union in their brief suggested remedies to the issue(s) and the Arbitrator
6 is going to amend the first two remedies and dismiss the third remedy. The third
7 remedy if adopted would have violated every time line in the Agreement and also
8 would have made it impossible for the County to comply as far as any back pay.
9 The remedy sought would have had the County look back over some five (5) years
10 and that is not going to happen.
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13 **AWARD**

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15 **The County is to apply going forward the side letter to the physical call backs**
16 **thus granting a credit of two hours for each physical call back.**
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18 **The County is to apply going forward the side letter to call backs that involve**
19 **a combination of remote and physical responses thus granting a credit of two**
20 **hours for the remote call back and a credit of two hours for the physical call**
21 **back.**
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Respectfully submitted;

A handwritten signature in black ink, appearing to read "David B. Hart", is written over the signature line. The signature is fluid and cursive, starting with a large "D" and ending with a long horizontal stroke.

David B. Hart

Arbitrator

Signed and dated this 18th day of October, 2023

EXHIBIT A

SIDE LETTER TO THE

2012-2016

MEMORANDUM OF UNDERSTANDING (“MOU”)

BETWEEN

THE COUNTY OF RIVERSIDE (“County”)

AND

THE LABORERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 777

(“LIUNA”)

The parties hereto agree to amend Article IV, Workweek, Overtime and Premium Pay, Section 3, Premium Pay, A Standby Professional Call Duty and B Minimum Overtime on Call-Back provision, of the 2012 – 2016 MOU between LIUNA and the County as follows:

- A. Standby Call Duty When placed by the Department Head specifically on standby duty, an employee otherwise off duty shall be paid one (1) hour pay for eight (8) hours of such duty beyond the regular work period in addition to the regular salary. Said compensation shall be in addition to said employee's regular salary entitlement. Notwithstanding any prior work practice to the contrary, said compensation shall cease when said employee physically reports to a worksite and will resume at the completion of the call-out work. The on-call duty compensation shall not cease if an employee is able to complete the required work remotely without having to physically report to a worksite. All standby call duty compensation shall cease at the end of the mandatory on-call shift.

“Worksite” for the purposes of this section shall mean the location an employee is required to physically report to in order to complete the work assigned.

- B. Minimum Overtime on Call-Back

1. Call-Back – Physically Reporting to a Worksite. Except as hereinafter otherwise provided, an employee who is physically called back to work to meet an emergency on an overtime basis, whether or not he is in a standby call duty status, shall receive minimum credit for two (2) hours’ work.

Any Nursing Assistant working for the Riverside County Regional Medical Center or Mental Health Inpatient Treatment Facility shall be entitled to a minimum credit of two (2) hours work. Said compensation would be as an additional sum added to said employees pay and not as a credit towards compensatory time off.

2. Call-Back – Responding Remotely. An employee who is called to perform work

but is able to complete the work required without the employee having to physically report to a worksite, whether or not he/she is on call duty status, shall receive minimum credit for two (2) hour's work at the overtime rate. If an employee should complete the work required, and subsequently be recalled during the minimum credit period, no additional compensation shall be paid for until the minimum credit period has exhausted.

The terms of this Side Letter shall become effective the first full pay period following signature of this Side Letter by both parties.

For the County of Riverside

For LIUNA, Local 777

in line of Brenda Dedovichs 10/17/18
Sarah M. Franco Date
Human Resources Division Manager
County of Riverside

SS-1 9/4/2018
Stephen Switzer Date
LIUNA