FORM GEN. 160

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: October 9, 2024

To: Kenneth Mejia, Controller
Attn: James Robinson, Principal Deputy Controller

From: Matthew W. Szabo, City Administrative Officer

Subject: **TECHNICAL CORRECTIONS FOR THE 2023 – 2028 MEMORANDUM OF UNDERSTANDING FOR THE SERVICE AND CRAFTS UNIT (MOU 14) (C.F. NO. 24-0427)**

The 2023 – 2028 Memorandum of Understanding (MOU) between the City of Los Angeles and the Service Employees International Union (SEIU), Local 721, for the Service and Crafts Unit (MOU 14) requires technical corrections to the classes of Heavy Duty Equipment Mechanic, Class Code 3743-0, and Heavy Duty Equipment Mechanic, Class Code 3743-6, as a result of two arbitration decisions and awards issued by Arbitrator Christopher David Ruiz Cameron (ARB No. 4036 issued August 2023) and Arbitrator Claude Dawson Ames (ARB No. 3957 issued December 2023). The arbitration awards are attached to this memorandum. The technical corrections to increase biweekly salary rates are identified below in **bold, underlined text**.

Appendix B (Operative March 24, 2024)

	Class Code	Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$3,945.60/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$4,450.40/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$4,267.20/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,042.40/BW**

Appendix C (Operative April 21, 2024)

	Class Code	Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$3,945.60/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$4,450.40/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$4,267.20/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,042.40/BW**

Appendix D (Operative September 22, 2024)

	Class Code	Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$4,064.00/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$4,584.00/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$4,395.20/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,193.60/BW**

Appendix E (Operative October 20, 2024)

	Class Code	Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$4,064.00/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$4,584.00/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$4,395.20/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,193.60/BW**

Appendix F (Operative June 29, 2025)

	Class Code	Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$4,226.40/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$4,767.20/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$4,571.20/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,401.60/BW**

Appendix G (Operative June 28, 2026)

	Class Code	Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$4,395.20/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$4,957.60/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$4,754.40/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,617.60/BW**

Appendix H (Operative June 27, 2027)

	Class Code	Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$4,527.20/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$5,106.40/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$4,896.80/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,786.40/BW**

Appendix I (Operative December 26, 2027)

Class Code		Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$4,663.20/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$5,259.20/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$5,044.00/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$5,960.00/BW**

Appendix J (Operative June 25, 2028)

Class Code		Title	Salary Rate
Current:	3743-0	Heavy Duty Equipment Mechanic	$4,756.80/BW
Corrected:	**3743-0**	**Heavy Duty Equipment Mechanic**	**$5,364.00/BW**
Current:	3743-6	Heavy Duty Equipment Mechanic	$5,144.80/BW
Corrected:	**3743-6**	**Heavy Duty Equipment Mechanic**	**$6,079.20/BW**

All other classifications, ranges, and salaries remain unchanged.

Please direct inquiries on this topic to Paola Ferrari at (213) 978-7661 or paola.ferrari@lacity.org.

MWS:MCB:PAG:PF:0725024

Attachments

c: Daniel Quach, Controller's Office
Vivienne Swanigan, City Attorney
Steve Koffroth, SEIU
Isophine Atkinson, WD Compensation Lead

BEFORE CHRISTOPHER DAVID RUIZ CAMERON

NEUTRAL ARBITRATOR

In the Matter of Arbitration Between CITY OF LOS ANGELES, by and through its GENERAL SERVICES DEPARTMENT, Employer, - and - SEIU LOCAL 721, Union. Regarding Group Grievance of Trevor Pope and Other Heavy Duty Equipment Mechanics.	)	ARBITRATOR'S OPINION AND AWARD ARB No. 4036

Neutral Arbitrator
Christopher David Ruiz Cameron

Advocates

For the Union[*]	*For the Employer*[**]
Nicholas Nava, Esq.	Thomas Trujillo, Senior Personnel Analyst
Jonah Lalas, Esq.	Andrew Jedlinksky, Personnel Director
Rothner Segall & Greenstone	Personnel Department

Hearing Date
May 25 and June 22, 2023
Via Zoom

Opinion and Award Issued
August 1, 2023

[*] Attended by Linchi Nguyen.

[**] With Tony R. Royster, GSD general manager, and Gina Tervalon, personnel director III, on the Employer's Closing Brief.

OPINION

INTRODUCTION

This group grievance ("Grievance") charges that the City of Los Angeles, which operates the Department of General Services ("Employer" or "Department"), violated Article 5.10, Section G of the memorandum of understanding governing heavy duty equipment mechanics in bargaining unit 14 ("MOU 14") and/or Section 4.91 of the Los Angeles City Administration Code ("LAAC"). These authorities require that each employee promoted to the position of heavy duty equipment mechanic ("Heavy") in the Department's Fleet Services Division be paid a minimum of 5.5 percent more than the rate paid to the highest-compensated subordinate employee holding his or her former position, such as equipment mechanic ("EM") or senior equipment mechanic ("SEM"). The Grievance came before me pursuant to a mutual appointment by the parties ("Parties"): the Employer and SEIU Local 721 ("Union"), the union representing affected Heavies, SEMs, and EMs.

On May 25 and June 22, 2023, a hearing was held by videoconference. The Parties appeared remotely and offered witness testimony and documents that were marked and admitted into evidence as discussed below. They were well-represented by effective advocates: the Union, by Nicholas Nava, Esq., and Jonah Lalas, Esq., both of Rothner Segall & Greenstone in Pasadena, Calif.; and the Employer, by Thomas Trujillo, Senior Personnel Analyst, and Andrew Jedlinsky, Personnel Director, both of the Employer's Personnel Department in Los Angeles.[1] No transcript of the hearing was made. The official record consists solely of this Opinion and Award and the exhibits admitted into the record as described below.

[1] With Mr. Trujillo on the Employer's Closing Brief were Tony R. Royster, GSD general manager, and Gina Tervalon, personnel director III.

On July 26, 2023, the Parties submitted closing arguments by filing written briefs. I cross-served the Parties. No reply or rebuttal briefs were filed. These arrangements were made by stipulation. The contents of the briefs, together with any and all exhibits already admitted, as well as other documents referenced therein and submitted therewith, are hereby made part of the record. The record having been completed, I hereby declare it closed. The Grievance is now ripe for resolution.

JURISDICTION

The Parties stipulated that, except for timeliness, all the steps of the grievance procedure have been complied with, the Grievance is properly before me, and I have jurisdiction to decide the Issues Presented and the remedy, if any.

ISSUES PRESENTED

The Parties stipulated to the following issues:

1. Was the group grievance ("Grievance") brought on behalf of Trevor Pope and other Heavy Duty equipment mechanics ("Heavies") timely?

2. If so, did the Employer violate Article 5.10, Section G of MOU 14 and/or Section 4.91 of the Los Angeles City Administrative Code?

3. If so, what is the appropriate remedy?

STANDARD APPLIED

In accordance with general arbitral practice, I required the Union to prove the Grievance and the material facts supporting it by a preponderance of the evidence.

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EVIDENCE SUBMITTED

The Parties called a total of seven (7) witnesses.

The Union called five (5) witnesses: Jason Madsen, Heavy; Howard Cornes, EM; Bernardo Hernandez, Heavy; Marco Rojas, SEM and member, Union bargaining team;[2] and David Sanders, chief negotiator, Union bargaining team. At all relevant times, each of these witnesses was employed by the Employer and/or represented the Union in the capacity indicated.

The Employer called two (2) witnesses: Stephanie Ozawa, senior labor relations specialist, Office of the Chief Administrative Officer ("CAO"); and Angela Brown, senior labor relations specialist II and lead negotiator, Employer bargaining team.[3] At all relevant times, each of these witnesses was employed by the Employer and/or represented the Employer in the capacity indicated.

No rebuttal witnesses were called.

The Parties offered into evidence a total of twenty-two (22) sets of exhibits: five (5) joint exhibit offered together by the Parties; fifteen (15) exhibits offered by the Union; and two (2) exhibits offered by the Employer. All but three of these exhibits was admitted into evidence.[4]

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[2] Mr. Rojas has since been promoted to automotive supervisor.

[3] Ms. Brown has since been promoted to personnel director III at the Port of Los Angeles.

[4] Union Exhibit Nos. 12 and 13 and Employer Exhibit No. 1 were each withdrawn.

RELEVANT MOU AND LAAC PROVISIONS

Cited herein, and quoted in pertinent part as necessary throughout this Opinion, are the following provisions of MOU 14, which spans the period July 1, 2018 to June 30, 2021: the Promotional Differential as codified in Article 5.10, Section G (JX 1); the grievance procedure as codified in Article 3.1 (JX 2); compensation by classification as codified in Appendix C (JX 3); and corresponding provisions of successor MOU 14, which span the period January 1 2023, to December 30, 2023 (JX 4).

Also cited herein and quoted in pertinent part are the relevant provisions of Section 4.91 of the LAAC (JX 5).

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POSITIONS OF PARTIES

Union's Position

The Union takes the position that the Grievance should be sustained and the Employer called out for misleading the Union at the bargaining table by giving assurances that it had no intention of honoring. In this case, the assurances were that employees who climbed the Department's promotional ladder – from EM to SEM to Heavy – would be rewarded with measurably higher compensation than subordinate employees.

The Issues Presented by the Grievance are identical to the issues presented by the grievance decided in LAPD & SEIU 721 (Marco Rojas Grievance), ARB No. 3956 (issued Jul. 19, 2022) ("ARB No. 3956") (UX 15), and on a similar factual record. In ARB No. 3956, I sustained the Union's position. The Union urges that I take notice of ARB No. 3956 and apply it here as appropriate.

During the relevant round of negotiations, the Employer gave the Union assurances that it would adhere to Article 5.10, Section G, of MOU 14 (JX 1, p. 6) and/or Section 4.91 of the LAAC (JX 5, p. 36). These authorities require that each employee promoted to the position of Heavy be paid a minimum of 5.5 percent more than the rate paid to the highest-compensated subordinate employee holding his or her former position, such as EM or SEM. This requirement is known as promotional differential compensation ("Promotional Differential"). The calculation of the Promotional Differential must include any bonuses or premiums paid to employees holding the former position.

The undisputed record, however, shows that across the Department and its Fleet Services Division affected Heavies are paid less than the minimum Promotional Differential. This phenomenon is known as "wage compaction." Indeed, some Heavies, such as Jason Madsen

(UX 8) and Bernardo Hernandez (UX 10), actually are paid ***less*** than subordinate EMs, such as Howard Cornes (UX 9). In fact, Mr. Hernandez took a ***pay cut*** of nearly $5 per hour despite having promoted from EM to Heavy (UX 10, pp. 50-51). It is undisputed that the position of Heavy requires more skill and training, and is more challenging and dangerous, than the position of EM (UX 2).

At least three reasons support the Union's position.

First, the plain language of the labor contract creating the Promotional Differential favors the Union's position. According to Article 5.10, Section G, of MOU 14:

> Notwithstanding the rate provided for in LAAC Section 4.91 . . . employees who receive a promotion shall be moved to the salary step that provides ***a minimum of 5.5% increase*** over the rate received in the former position. As provided in LAAC Section 4.91, ***any regularly assigned bonus*** or premium compensation ***amounts shall be included in calculating the step rate for the former position and added to the new salary*** . . . .

(JX 1, p. 6) (emphases added.)

Yet it was undisputed that Grievant Jason Madsen and Bernardo Hernandez, among others, are not paid "a minimum of 5.5% increase" over subordinate EMs such as Howard Cornes; indeed, they are often paid less. And it was undisputed that, as to employees promoted to Heavy from EM, not "any" of the "regularly assigned bonus . . . amounts" were "included in calculating the step rate for the former position and added to the new salary." These bonuses were for biohazard cleanup, hybrid/electric vehicle maintenance, and special vehicle equipment repair, including equipment or vehicles powered by alternative fuels such as compressed natural gas ("CNG") or liquefied natural gas ("LNG").

Second, the bargaining history favors the Union's position as well. The Union's evidence showed that its bargaining team received assurances from the Employer's lead negotiator that the higher compensation of Heavies over subordinates would be preserved by

Article 5.10, Section G, of MOU 14. As noted above, this provision preserved the Promotional Differential by rolling the bonuses into the calculation of the minimum 5.5 percent spread in compensation between an employee promoted to Heavy from SEM or EM. This was the credible testimony of Union Bargaining Team Member Marco Rojas and Union Chief Negotiator David Sanders. The Union relied to its detriment on such assurances by the Employer's lead negotiator even though the language granting the new bonuses referred to "equipment mechanics" but not "senior" or "heavy" equipment mechanics. These assurances are the misleading assurances that the Union asserts were not honored.

Third, the failure to pay the Promotional Differential is nonsensical. It has undermined the integrity of the Employer's compensation system by creating an inequitable pay disparity between Heavies and subordinate EMs or SEMs. This failure interferes with the reasonable expectations of bargaining unit employees, who seek promotions in part in order to increase their relative compensation. It also disincentivizes EMs who otherwise would seek to promote into leadership positions on the promotional ladder. In fact, at least one affected employee, EM Howard Cornes, testified that he would not apply to promote to Heavy because there would be "no point" in working a more demanding and dangerous job for less compensation.

Accordingly, the Grievance should be sustained and the affected Heavies be made whole.

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Employer's Position

The Employer takes the position that the Grievance should be denied. At least two reasons support the Employer's position.

First, the Grievance was untimely. According to Article 4.b.2 of MOU 14, which governs the initiation of group grievances:

> The Union shall file the grievance in writing with the General Manager, or designee, of the affected department ***within twenty (20) business days*** following the day the issue arose.

(DX art. 4.b.2) (emphasis added.)

But the Grievance was not filed "within twenty (20) business days" of the promotion of each of the affected employees. The affected employees were promoted from EM to Heavy on various dates spanning the period November 2002 to March 2018. The Union raised no concerns about the Promotional Differential as applied to either SEMs or Heavies until March 2019, and apparently, refrained from filing the Grievance until an uncertain date in 2019 or 2020. In any event, the Grievance was filed well after the twenty (20) day limitations period expired.

Second, each of the affected Heavies was properly compensated with the Promotional Differential. Besides, at all relevant times, Heavies were "flat-rated" employees who were paid without reference to salary "steps." This means that the language of Article 5.10, Section G, of MOU 14 – which requires that "any regularly assigned bonus . . . amounts shall be included in calculating the ***step rate*** for the former position and added to the new salary" (emphasis added) – was irrelevant.

Accordingly, the Grievance should be denied and the affected Heavies should take nothing by the Grievance.

SUMMARY OF FACTS

About the Promotional Ladder

At all relevant times, the position of heavy duty equipment mechanic, or Heavy, was and remains is the highest-ranked job classification on the promotional ladder of the Fleet Services Division. The three job classifications on this ladder are EM, SEM, and Heavy. The employees holding these classification are ranked in the same order: EMs are subordinate to SEMs and SEMs are subordinate to Heavies.

It is undisputed that the position of Heavy requires more skill and training, and is more challenging and dangerous, than the positions of either EM or SEM. For example, whereas EMs may maintain, service, and repair light vehicles, such as automobiles and pickup trucks (UX 2), Heavies must maintain, service, and repair all types of vehicles and equipment, especially construction vehicles and equipment (UX 1). These vehicles include back hoes, bulldozers, dump trucks, front-end loaders, street rollers, street sweepers, wheel loaders, and 18-wheel tractor-trailers. The equipment onboard these vehicles can include air compressors and hydraulic systems (UX2). Some of these vehicles and equipment are taller than a human being and, if not properly handled, can injure or kill a mechanic. In short, the work of a Heavy is more "entailed and specialized" than that of any EM or SEM.

It also is undisputed that the position of Heavy requires more exposure to the elements. Whereas EMs usually work indoors, Heavies often work outdoors in the elements.

In order to promote to Heavy, an employee must spend a minimum of two years as an EM, undergo written testing, and submit to interviews.

According to the record, at least two things motivate mechanics who consider applying to be Heavies: the desire for more challenging work and the appeal of more compensation. This

was the testimony of Heavies Madsen and Hernandez; EM Cornes added that he would ***not*** apply to promote to Heavy because there would be "no point" in working a more demanding and dangerous job for less compensation.

About the Merits

The Grievance alleges that the Employer has failed to preserve for Heavies the Promotional Differential codified in Article 5.10, Section G, of MOU 14 and/or Section 4.91 of the LAAC. In sum, these authorities required that each employee promoted to the position of Heavy in the Department be paid a minimum of 5.5 percent more than the rate paid to the highest-compensated subordinate employee holding the position of EM or SEM, with any bonuses paid to employees holding those positions rolled into their base rate.

According to Article 5.10, Section G, of MOU 14:

> Notwithstanding the rate provided for in LAAC Section 4.91 . . . employees who receive a promotion shall be moved to the salary step that provides a minimum of 5.5% increase over the rate received in the former position. As provided in LAAC Section 4.91, any regularly assigned bonus or premium compensation amounts shall be included in calculating the step rate for the former position and added to the new salary . . . .

(JX 1, p. 6) (emphasis added.)

Similarly, according to Section 4.91 of the LAAC:

> (a)(4) In no case shall an employee be placed lower than the lowest step or higher than the top step of the salary range for the new position.
>
> * * *
>
> (b) Flat rate salary amounts shall be considered to be the top step of the salary range for the position.

(JX 5, p. 36.)

The Grievance arose when it came to the Union's attention that, across the Department and its Fleet Services Division, affected Heavies were being paid less than the minimum

Promotional Differential. This phenomenon is known as "wage compaction." Indeed, some Heavies, such as Grievant Jason Madsen (UX 8) and Bernardo Hernandez (UX 10), actually are paid ***less*** than subordinate EMs, such as Howard Cornes (UX 9).

Consider the case of Mr. Hernandez, who took a ***pay cut*** of nearly $5 per hour despite having promoted from EM to Heavy. In August 2022, he was an EM being paid $53.78 per hour. But by October 2022, he was a Heavy being paid $49.05 per hour. In the span of about a month, his paycheck fell from $3,328.04 to $3,013.31 – even though he had just promoted into a higher job classification (UX 10, pp. 50-51).

In March 2019, apropos of the bonus language in Article 5.10, Section G, of MOU 14, the Parties conducted negotiations (UX 5, 6) and entered into the tentative agreement ("TA") that contained language granting bonuses in various sums to "Equipment Mechanics" assigned to perform regular duties relating to biohazard cleanup, hybrid/electric vehicle maintenance, and special vehicle equipment repair (DX 2, pp. 9-10). The purpose of these bonuses was to compensate employees for performing additional work not spelled out in their official job descriptions. No explicit mention was made in the TA of paying these bonuses to SEMs or heavy duty equipment mechanics.

Effective July 2019, the Parties codified these bonuses for "any Equipment Mechanic" assigned to perform regular duties relating to biohazard cleanup, hybrid/electric vehicle maintenance, and special vehicle equipment repair in the "Salary Notes" of MOU 14 and its successor (JX 1, p. 10; JX 4, p. 33). Again, no explicit mention was made in the Salary Notes of paying these bonuses to SEMs or Heavies.

Concerned that the bonuses designated for EMs could be denied to SEMs and Heavies, and thereby cause "wage compaction" that would undermine the Promotional Differential, Union

representatives contacted Employer Bargaining Team Lead Negotiator Angela Brown and held conversations about why bonuses for senior equipment mechanics were not specifically included in the TA or Salary Notes. These Union representatives included Union Negotiation Team Member Marco Rojas and Union Chief Negotiator David Sanders. The precise timing of their conversations with Ms. Brown was unclear, but it appeared to occur during negotiations, sometime after the TA was entered into but before MOU 14 and the Salary Notes went into effect. The gist of what Ms. Brown advised these Union representatives was that it was not necessary to add SEMs or Heavies to the documents in order to secure them the same bonuses that EMs were slated to get.

A dispute arose as to the precise nature of the conversations that occurred between Employer Bargaining Team Lead Negotiator Brown and Union representatives.

Earlier, during the hearing in ARB No. 3956, Mr. Rojas testified without contradiction that he said to Ms. Brown, "I don't see senior equipment mechanics in here," and Ms. Brown replied, "We're not going to put them in there." Mr. Rojas, who by then was a SEM himself, asked, "How am I going to get the pay if senior equipment mechanics are not in here? How am I going to get paid for this?" Ms. Brown replied, "You will get it on the promotional ladder." Mr. Rojas asked, "How can I be sure? How am I going to get this pay?" Ms. Brown replied, "Oh no, you're going to get it. You always get 5.5% above your subordinates." Mr. Rojas asked, "Where does it say that?" Ms. Brown replied, "It's in your MOU – you can go look for yourself."

So Mr. Rojas and other Union bargaining team members did look for themselves. They found the language quoted above in Article 5.10, Section G, of prior MOU 14. After reading it, Mr. Rojas and the others went to Ms. Brown to confirm their understanding of the language. Mr.

Rojas asked, “Is this how senior equipment mechanics are going to get it [the bonuses]?” Ms. Brown replied, “Yeah, that’s it.” She said, “You get 5.5% up the ladder.” As seniors, “Everybody gets it up the ladder.” Afterward, Mr. Rojas was “happy” because “we felt this was going to work fine.” He testified: “I was pretty much satisfied” that specific bonus language for SEMs and Heavies would not be necessary.

Testifying to the same effect as Mr. Rojas in ARB No. 3956 were two other Union bargaining team members: Antonio Ruiz, a SEM, and David Sanders, Union chief negotiator. According to Mr. Sanders, Ms. Brown was “emphatic” that leaving out this term would have “no impact” because the bonuses of EMs would be taken into account by the aforementioned language preserving the Promotional Differential favoring SEMs and Heavies. So there was no need to specify bonuses for SEMs or Heavies. Union representatives had at least “a dozen” conversations with Ms. Brown to this effect. Mr. Sanders recalled this exchange because it took place against the backdrop of the Union’s position, expressed during negotiations by Victor Gordo of the Coalition of City Unions, that there must be equity in setting wage scales in City service.

Against the weight of this testimony, Ms. Brown testified at the hearing in ARB No. 3956, “I do not recall any mention of a senior equipment mechanic bonus of any sort being discussed.” Nor did she recall any complaints about the TA after it was signed. At no point in her testimony did Ms. Brown dispute either the statements attributed to her by Union reprsentatives or the stated understanding of those Union representatives as to how the Promotional Differential would work. Curiously, fact, even on direct examination, Ms. Brown was never asked to comment on the testimony of either Mr. Rojas, Mr. Ruiz, or Mr. Sanders as

to the substance of the negotiations, the Union's version of the Parties' bargaining history, or the effect of that bargaining history on the Promotional Differential.

But more recently, at the hearing on the present Grievance, Ms. Brown took issue with the statements that had been attributed to her at the hearing in ARB No. 3956. She disputed the testimony of Mr. Rojas, Mr. Ruiz, and Mr. Sanders about their having conversations regarding the issue of wage compaction and how the language in MOU 14 preserved the Promotional Differential, at least as to Heavies. Instead, she stated that there had been "no opportunity" to dispute what Mr. Rojas or Mr. Sanders said in the earlier hearing, because she was not asked about it. She testified: "I know for certain know there were no discussions about heavy duty equipment mechanics." There was "no back and forth with me" relating to Heavies.

About the Grievance

Little documentation about the timing of the Grievance was offered into evidence. In fact, the Grievance itself was omitted from the record.

On an uncertain date in 2019 or 2020, the Grievance was filed.

Thereafter, on various dates in 2020 through 2023, at least 73 affected mechanics Bargaining Unit 14 signed agreements waiting their right to file individual grievances (UX 14).

Apparently, the Grievance was denied by the employer.

Thereafter, the Grievance was appealed to arbitration.

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DISCUSSION

For the most part, the Employer re-runs here the same arguments that it made in ARB No. 3956: the Grievance was untimely and, in any event, the Promotional Differential was properly applied to the compensation of Heavies. Each argument is discussed in turn.

About the Timeliness of the Grievance

The Employer takes the position that the Grievance was untimely. According to Article 4.b.2 of MOU 14, a grievance must be filed "within twenty (20) business days" of the promotion of each of the affected employees. But the Grievance was not filed "within twenty (20) business days" of the promotion of each of the affected employees. The affected employees were promoted from EM to Heavy on various dates spanning the period November 2002 to March 2018. But the Union raised no concerns about the Promotional Differential as applied to either SEMs or Heavies until March 2019, and apparently, refrained from filing the Grievance until an uncertain date in 2019 or 2020. In any event, the Grievance was filed well after the twenty (20) day limitations period expired.

For at least two reasons, I must reject the Employer's untimeliness argument.

First, the untimeliness argument was itself untimely. The leading treatise on labor arbitration states: "Even if time limits are clear, late filing will not result in dismissal of the grievance if ***the circumstances are such that it would be unreasonable*** to require strict compliance with the time limits specified by the agreement" (Elkouri & Elkouri, How Arbitration Works Ch. 5.7.A.ii, at p. 5-32 (8th ed. 2016) (emphasis added)). To this end, the same treatise states: "In many cases time limits have been held waived by a party who had recognized and negotiated a grievance without making clear and timely objection" (*id.*, *supra*, at p. 5-34). No clear and timely objection was made by the Employer. The record, however, is

devoid of evidence that the untimeliness argument was preserved by the Department; indeed, little documentation about the timing of the Grievance was made part of the record. This omission must be charged to the Employer, which had the burden of proving untimeliness, like any defense, by preponderance of the evidence. As a result, I find that "the circumstances are such that it would be unreasonable" to require the Union's strict compliance with Article 4.b.2 of MOU 14.

Second, even if the Employer had not waived its untimeliness argument, the Grievance addresses a continuing violation. That is, each pay period that the Employer violated and keeps violating the Promotional Differential, constitutes a continuing violation of MOU 14.

Accordingly, I reject the Employer's untimeliness argument.

About the Proper Application of the Promotional Differential

The Union takes the position that Employer broke its promise to preserve the Promotional Differential codified in Article 5.10, Section G, of MOU 14 and/or Section 4.91 of the LAAC.

For at least two reasons, I must agree with the Union's position and sustain the merits of the Grievance.

First, the plain language of the labor contract creating the Promotional Differential favors the Union's position. According to Article 5.10, Section G, of MOU 14:

> Notwithstanding the rate provided for in LAAC Section 4.91 . . . employees who receive a promotion shall be moved to the salary step that provides a minimum of 5.5% increase over the rate received in the former position. As provided in LAAC Section 4.91, ***any regularly assigned bonus*** or premium compensation ***amounts shall be included in calculating the step rate for the former position and added to the new salary*** . . . .

(JX 1, p. 6) (emphases added.)

Under the foregoing language, the bonuses for EMs laid out in the Salary Notes to MOU 14 were "regularly assigned bonus . . . amounts" that had to be "included in calculating the step rate for the former position and added to the new salary." But such bonuses were not included in these calculations. In fact, the undisputed record showed that a number of Heavies are paid less than the minimum Promotional Differential. Indeed, some Heavies, such as Jason Madsen (UX 8) and Bernardo Hernandez (UX 10), actually are paid ***less*** than subordinate EMs, such as Howard Cornes (UX 9). In fact, Mr. Hernandez took a ***pay cut*** of nearly $5 per hour despite having promoted from EM to Heavy (UX 10, pp. 50-51). This was despite the fact that the position of Heavy requires more skill and training, and is more challenging and dangerous, than the position of EM (UX 2).

In my view, this sort of wage compaction – perhaps wage contraction is the better term – cannot be squared with the plain meaning of the language of Article 5.10, Section G, of MOU 14.

Second, the bargaining history regarding the three new bonuses confirms the Union's position as to what the words in MOU 14 meant.

The evidence presented, which was substantially the same as that presented in ARB No. 3956, showed the Employer's lead negotiator expressly represented to the Union's negotiation team – including SEMs Rojas and Ruiz and Chief Negotiator Sanders – that the new bonuses for EMs effectively would be paid to Heavies and SEMs as well. Lead Negotiator Brown advised that Article 5.10, Section G, of MOU 14 preserved the Promotional Differential by rolling the new bonuses into the calculation of the minimum 5.5% increase in SEM over EM compensation (UX 5, pp. 18-19; UX 6, p. 25). She said things like, "Everybody gets it up the ladder," and, "It's in your MOU." That was why Mr. Rojas was "happy" and "we felt this was going to work

fine." That was why Mr. Ruiz felt that Ms. Brown had "reassured us" and he thought, "We're golden." And that was why Ms. Brown told Mr. Sanders that the new bonus language would have "no impact" on the Promotional Differential.

Against the weight of the Union's evidence, the Employer cited Ms. Brown's contradicting the testimony of Mr. Rojas, Mr. Ruiz, and Mr. Sanders about their having had conversations regarding the issue of wage compaction and how the language in MOU 14 preserved the Promotional Differential – at least as to Heavies. Instead, she stated that there had been "no opportunity" to dispute what Mr. Rojas or Mr. Sanders said in the earlier hearing, because she was not asked about it. She testified: "I know for certain know there were no discussions about heavy duty equipment mechanics." There was "no back and forth with me" relating to Heavies.

I credit the testimony of Mr. Rojas and Mr. Sanders over that of Ms. Brown. (Mr. Ruiz did not testify at the hearing on the present Grievance.) They told essentially the same story in both ARB No. 3956 and here. But even if I credited the revised story of Ms. Brown, it would not make a difference. She did not revise her earlier testimony about the Promotional Differential or how it works in general. She testified, "***Everybody*** gets it up the ladder" and, "You ***always*** get 5.5% above your subordinates." In my view, her testimony that "Everybody . . . always" gets the Promotional Differential was broad enough to include the Heavies as well as the SEMs on the promotional ladder.

Also against the weight of the Union's evidence, the Employer cited the "flat rate" testimony offered by Senior Labor Relations Specialist Ozawa. The gist of this testimony was that, at all relevant times, Heavies were "flat-rated" employees who were paid without reference to salary "steps." This meant that the language of Article 5.10, Section G, of MOU 14 – which

requires that "any regularly assigned bonus . . . amounts shall be included in calculating the ***step rate*** for the former position and added to the new salary" (emphasis added) – was irrelevant.

I do not credit the testimony of Ms. Ozawa for the same reason that I did not credit her testimony in ARB No. 3956: it is inconsistent with the plain language of MOU 14.

In light of the two foregoing persuasive reasons, I need not address the Union's third reason: the failure to pay the Promotional Differential has undermined the integrity of the Employer's compensation system by creating an inequitable pay disparity between Heavies and subordinate EMs.

Accordingly, I must sustain the Grievance on the merits: the Employer failed properly to apply the Promotional Differential to Heavies.

About the Remedy

Having found that the Employer violated Article 5.10, Section G of MOU 14 and/or Section 4.91 of the LAAC, I will order as follows:

- That the Employer cease and desist from violating Article 5.10, Section of MOU 14 and/or Section 4.91 of the Los Angeles City Administrative Code.

- Going forward, that the Employer pay to Heavies the Promotional Differential in a manner that takes into account all applicable bonuses paid to EMs.

- Looking backward, that the affected Heavies shall be made whole. Such make-whole relief shall include, but not necessarily be limited to, backpay as measured by the difference between what affected Heavies actually were paid and what they should have been paid had the applicable bonuses paid to EMs properly been taken into account, plus appropriate interest thereon.

Moreover, the Parties will be directed to meet and confer as to the exact nature and extent of the make-whole relief. In the event of any dispute as to any aspect of the remedy, including the make-whole relief, I shall retain jurisdiction for up to one (1) year to resolve such dispute.

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A W A R D

Wherefore, in light of the foregoing Opinion, I hereby make the following Award:

1. The Group Grievance brought on behalf of Trevor Pope and other Heavies was timely.

2. The Employer violated Article 5.10, Section G of MOU 14 and/or Section 4.91 of the Los Angeles City Administrative Code.

3. The appropriate remedy is as follows:

a. The Employer is ordered to cease and desist from violating Article 5.10, Section of MOU 14 and/or Section 4.91 of the Los Angeles City Administrative Code;

b. Going forward, the Employer is ordered to pay to affected Heavies the Promotional Differential in a manner that takes into account both the 5.5% Promotional Differential and all applicable bonuses paid to the relevant classifications; and

c. Looking backward, the Employer is ordered to make whole the affected Heavies. Such make-whole relief shall include, but not necessarily be limited to, backpay as measured by the difference between what the Heavies actually were paid and what they should have been paid had both the 5.5% Promotional Differential and all applicable bonuses paid to the relevant classifications been taken into account, plus appropriate interest thereon.

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4. The Parties are ordered to meet and confer to determine and implement the Award, including the exact nature and extent of the make-whole relief. In the event of any dispute as to any aspect of the remedy, including the make-whole relief, I shall retain jurisdiction for up to one (1) year to resolve such dispute.

BY:
Christopher David Ruiz Cameron
Neutral Arbitrator

DATED:
August 1, 2023
Los Angeles, California

IN ARBITRATION PURSUANT TO THE PARTIES

MEMORANDUM OF UNDERSTANDING 14

IN THE MATTER OF CONTROVERSY BETWEEN SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 721, Union, and CITY OF LOS ANGELES POLICE DEPARTMENT, Employer.	Arbitration No. 3957 ARBITRATOR'S DECISION AND AWARD
Re: HDEMs Promotional Differential Clause	

Before: Claude Dawson Ames, Arbitrator

Appearances:

For the Union: Carlos Coye, Esq.
Rothner, Segall & Greenstone
510 South Marengo Avenue
Pasadena, California 91101-3115

For the Department: Achim Jung, Senior Personal Analyst I
Employee Relations Group
Los Angeles Police Department
100 West First Street, 9th Floor
Los Angeles, California 90012

I.

INTRODUCTION

This group arbitration proceeding arises pursuant to the parties' Memorandum of Understanding #14 (MOU #14) between the City of Los Angeles Police Department ("the City") and Service Employees International Union, Local 721 ("SEIU Local 721" or "Union") involving an alleged City violation of the parties' newly added "Promotional Differential" clause contained in Article 5.10 (Salaries), G. (Promotional Differential). The Union contends that the agreed upon differential clause ensures that promoted Heavy Duty Equipment Mechanic ("HDEM") employees make a salary of at least 5.5% above the salary of subordinate employees in their formerly held positions and below them on the promotional ladder, which the Grievants have not received.

The City denies violating the differential clause since both Grievants received considerably higher raises than the 5.5% over the gross compensation of the Equipment Mechanic ("EM") and the Garage Attendant ("GA") positions from which they were promoted. The City maintains that the differential clause of Article 5.10, G. does not apply to promotions for a flat rate salaried position when read in conjunction with Section 4.91 of the Los Angeles Administrative Code ("LAAC").

Claude Dawson Ames, Esq., was selected by the parties to arbitrate their dispute, and pursuant to Article 3.31 (Grievance Procedure) Step 4-D, the Arbitrator's decision "shall be binding upon all the parties concerned." Arbitration hearings were held on February 8, and March 7, 2023, along with a status conference hearing on June 23, 2023. The City recorded and transcribed the virtual hearings via Zoom at the Arbitrator's request. The parties stipulated that their dispute was properly before the Arbitrator and that all procedural issues had either been resolved or waived by the parties.

II.

RELEVANT MOU#14 CONTRACT PROVISIONS

ARTICLE 1.2. PARTIES TO MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding (MOU) is entered into on July 29, 2019, between the City Administrative Officer (CAO), as the authorized management representative of the Los Angeles City Council (City Council), and City departments, bureaus and division (Management), and an authorized representative of SEIU Local 721 as the exclusive recognized employee organization of the Unit.

ARTICLE 5.10 SALARIES, G.

PROMOTIONAL DIFFERENTIAL

Notwithstanding the rate provided for in LAAC Section 4.91, employees who receive a promotion shall be moved to the salary step (Step 2 or above) that provides a minimum 5.5% increase over the rate received in the former position.* As provided in LAAC Section 491, any regularly assigned bonus or premium compensation amounts shall be included in calculating the step rate for the former position and added to the new salary, if applicable, after determining the appropriate salary step rate for the new position.

***

SALARY NOTES

All bonuses are calculated on the employee's Base Pay...

BB. Effective July 7, 2019, any Equipment Mechanic, Code 3711, who has completed the appropriate training to refuel, repair, inspect and provide maintenance to Diesel, Hybrid, Electric CNG, and LNG equipment shall receive in addition to all other regular and premium compensation, additional pensionable compensation of one premium level (2.75%) above the flat rate of pay prescribed for the class.

CC. Effective July 7, 2019, any Equipment Mechanic, Code 3711-5/-6, and Welder, Code 3796-5/-6, assigned to the Los Angeles Fire Department, Los Angeles Police Department, and General Services Department-Area 1 when regularly assigned to cleaning activities associated with bio-hazard conditions shall receive in addition to all other regular and premium compensation, additional pensionable compensation of two premium levels (5.5%) above the flat rate of pay for the class.

EE. Effective July 7, 2019, any Equipment Mechanic, Code 3711-5 assigned to the Los Angeles Police Department (LAPD) who is regularly assigned to inspect and repair LAPD vehicle equipment shall receive, in addition to all other regular and premium compensation, additional pensionable compensation of seventy-five dollars ($75.00) bi-weekly or ten dollars ($10.00) non-pensionable above the flat rate of pay for the class for each day so assigned.

MOU# 14

Appendix D

Operative on January 19, 2020...

3711-5 Equipment Mechanic	$3280.00/BW...
3712-5 Senior Equipment Mechanic	$3469.60/BW...
3743-0 Heavy Duty Equipment Mechanic	$3575.20/BW

Los Angeles Administrative Code

Sec. 4.62.2 Supervision Differential

(a) Notwithstanding any other provision of this chapter, a bona fide supervisory employee in a class which has its compensation fixed by salary range number, with the exception of all attorney classifications in the Office of the City Attorney, shall be paid at a rate at the appropriate step of the range with the first step rate equivalent to the second

premium level rate above the first step rate of the subordinate class. For the purposes of this section, "bona fide supervisory employee" means a full-time, regularly assigned supervisor with full administrative and technical authority to assign, review and approve work of his or her subordinates The rates to be compared in determining the supervision differential shall be the maximum salary rates of ranges prescribed for the authorized and allocated classes of the bona fide supervisor and the subordinate, excluding any premiums, bonuses, or working condition differentials.

Sec. 4.91 Salary Step Placement on Assignment to a Different Position in City Service.

(a) Whenever an employee is assigned or appointed from a position to another position, the following step placement procedure shall apply:

(1) If the top step rate of the salary range for the new position is higher than the top step rate of the salary range for the former position, the employee shall be placed on the lowest step within the salary range for the new position which provides at least a five (5) percent increase over the rate received in the former position. Any regularly assigned bonus or premium compensation amounts shall be included in calculating the step rate for the former position and added to the new salary after determining the appropriate salary step rate for the new position.

(4) In no case shall an employee be placed lower than the lowest step rate or higher than the top step rate of the salary range for the new position.

(a) Salary Rate Comparisons

(1) All salary rate comparisons shall be made in the hourly or biweekly amounts for the step rates in the salary range.

(2) Flat rate salary amounts shall be considered to be the top step of the salary range for the position.

III.

ISSUES PRESENTED

1. Did the Employer (Los Angeles Police Department) violate Article 5.10, Section G. of the Memorandum of Understanding #14 and Section 4.91 of the LAAC? If so, what is the appropriate remedy?

III.

STATEMENT OF FACTS

A. Factual Background

During the 2015 bargaining sessions with the City and a "Coalition of Unions," including SEIU Local 721 and LIUNA, Local 777, the parties agreed to add a new clause ("Promotional Differential") to address common concerns among the Coalition of Unions about wage compaction of employees within certain job classifications. The concern, as presented by LIUNA's Local 777 Chief Negotiator, Victor Gordo, was that when a City employee was promoted to a higher level in the same classification, they would often find themselves making less money in the higher classification than at the previous lower classification. Employees were often reluctant to be promoted since their total salaries and bonuses were greater in the lower classifications than in the new classifications. The new Promotional Differential clause in Article 5.10, Section G was negotiated to correct the wage compaction problem and reads as follows:

> ***Notwithstanding the rate provided for in LAAC Section 4.91, effective December 13, 2015, employees who receive a promotion shall be moved to the salary step that provides a minimum of 5.5% increase over the rate received in the former position. As provided in LAAC Section 4.91, Any regularly assigned bonus or premium compensation amounts shall be included in calculating the step rate for the former position and***

added to the new salary, if applicable, after determining the appropriate salary step rate for the new position.

SEIU 721 represents all of the Equipment Mechanics ("EM"), Senior Equipment Mechanics ("SEM"), and Heavy-Duty Equipment Mechanics ("HDEM") who work out of the LAPD vehicle garages or the City's General Fleet Services Department and are not represented by the Supervisor's Blue-Collar Unit.

The EM position is an open/entry-level position requiring EM experience before promotion, unlike the SEM position, which is known as a "promotional" position. HDEMs are promoted from the EM positions and must pass multiple exams and department interviews before being promoted to the HDEM class. They must also perform skill work related to repairing and maintaining heavy-duty and larger city vehicles. It is undisputed that Grievants De Anda and Loya were promoted to the HDEM classifications on October 15, 2017.

B. <u>Bargaining History Promises</u>

During the 2019 bargaining sessions, SEIU 721 proposed three new bonuses for the LAPD Mechanics who were performing additional work on police vehicles absent from their job classification. David Sanders served as the Chief Negotiator for SEIU 721 along with Marco Rojas, who was voted by members of the Mechanic classification to represent their concerned interests at the bargaining table. Angela Brown was designated as the Chief Negotiator for the City. The City responded with a counter-proposal of a 2.75% bonus for work performed by EMs on hybrid and electric vehicles, a 5.5% bonus for work by EMs on cleaning associated with bio-hazard conditions, and a $75.00 bi-weekly bonus for EMs who regularly inspected and repaired LAPD's vehicles. The new MOU #14 would reflect the three bonuses in the salary notes section of the MOU. Marco Rojas was promoted from EM to SEM by the time the City presented its counter-proposal to Local

721 and became concerned because the City's counter-proposal did not include or provide for Senior Equipment Mechanics ("SEM") or the Heavy-Duty Equipment Mechanics ("HDEM") or Auto Body Builder ("ABB") to receive the three bonuses.

Mr. Rojas testified that he and Mr. Sanders sought clarification from City Chief Negotiator Angela Brown as to why their counter-proposal did not specifically reflect that SEMs (like himself) and HDEMs would receive the bonuses. Brown responded that the SEMs and HDEMs would also receive the three bonuses because everyone up the promotional ladder would receive them according to the language in MOU #14. (Article 5.10 Section G.) Promotional Differential Clause. Rojas reviewed the language of Article 5.10 Section G and asked Brown if the clause included EMs, SEMs, and HDEMs eligible to receive the three bonuses, even if they were not explicitly listed in the salary notes.

Brown answered yes, and clarified that everyone gets 5.5% above what their subordinates make. Brown did not mention the term "bona fide supervisor" or state that EM's three new bonuses would not be factored into the HDEM's salary calculations because they received flat rate salaries and were supervisors. Based on Brown's representation that the promotional-differential clause guaranteed HDEMs the three bonuses and a minimum of 5.5% salary differential between the HDEMs and the EMs, the Union voted to ratify the contract. Chief Negotiator Brown was not called as a witness by the City to rebut the Union's witnesses' testimony, which remains unrebutted in the evidence record before this Arbitrator.

C. <u>HDEMs De Anda and Loya</u>

The three newly assigned bonuses were implemented citywide approximately one year after signing the MOU #14 agreement on July 29, 2019. However, it was not until the pay period ending on August 15, 2020, that EMs saw an actual increase in their salary of at least $50.50 while the HDEM's salaries remained the same. HDEMs De Anda and Loya

filed their grievance on October 20, 2020, alleging a City violation of the agreed promotional-differential clause by failing to pay HDEMs at a minimum rate of 5.5% higher than the EMs.

The City denied the Union's grievance, arguing partly that the HDEM was paid as required and interprets MOU #14 Art. 5.10 G [as read] in connection with LAAC Section 4.91..., "the promotional-differential clause does not apply to promotions for flat rate salaried positions, as the HDEMs." The City further maintains that statements allegedly made by Ms. Brown to Mr. Rojas and Mr. Sanders are unsubstantiated because Ms. Brown does not remember having made these statements. The Union timely appealed the City's denial of its grievance to arbitration for arbitral review.

V.

POSITION OF THE PARTIES

A. Union's Position:

The City broke its promise by failing to include the three new bonuses when calculating the wage difference between the Equipment Mechanics and Heavy-Duty Equipment Mechanics. The Employer broke its promise to preserve the promotional differential between the two classifications contained in Article 5.10, Section G of MOU #14. The Agreement's plain language leaves no doubt that the Equipment Mechanic bonuses should be included in calculating the Heavy-Duty Equipment mechanic's salary. Even assuming an ambiguity exists in the promotional-differential clause between the parties, the bargaining history surrounding the promotional-differential clause is relevant to include the three new bonuses. The City's Chief Negotiator's explicit promises at the bargaining table establish that the City violated MOU #14. There is no dispute that under the promotional-differential clause, HDEMs must make at least 5.5% more than EMs. Notwithstanding the rate provided for in LAAC Section 4.91, employees who receive a

promotion under the differential clause shall be moved to the next salary step that provides a 5.5% minimum increase over the rate received in the former position. The dispute is over whether the 5.5% minimum rate requirement must include the three new regularly assigned bonuses received by the EM. The plain language of the promotional-differential clause establishes that the HDEM's calculated salaries must include the three new regularly assigned bonuses received by the EMs.

The City maintains three arguments: 1) EMs and HDEMs are not included in the regularly assigned new bonuses because they are paid at a flat biweekly rate, and the promotions differential clause applies only to salary rates; 2) LAAC Section 4.62..2 controls and supersedes the promotional-differential clause and the City is not obligated to include the three new regularly assigned bonuses in the flat rate salary calculation of HDEM supervisors, and 3) the promotional-differential clause applied only at the time of HDEMs De Anda and Loya promotion and only De Anda is entitled to receive because the bonuses were not in effect before July 7, 2019.

The Union contends that the City's flat—rate argument must be rejected along with its reliance on LAAC Section 462.2 concerning supervisor differential denial that bonuses should not be considered in the HDEM's salary calculations for "bona fide" supervisors. The City's flat biweekly rates do not apply to the text of Article 5.10., Section G, Promotional Differential Clause. Although the flat rate appears in Section 4.91 of LAAC, the promotional-differential clause expressly rejects any reliance on the rates discussed in that section. City witness Girard expressly contradicted this argument that employees who receive flat rate salaries are ineligible under the promotional-differential clause to receive bonuses because they are at the "top step." Although the EMs are subordinate to HDEMs, the HDEMs are never "bona fide supervisors" or in the Supervisor's Union. HDEMs De Anda and Loya are entitled to the three newly assigned bonuses. If the City's

position is upheld, it would lead to an absurd result because nothing in the text of the promotional-differential clause states that the differential applies only on a one-time basis.

The Union bargaining history reveals the City's explicit promise by its Chief Negotiator Brown, that HDEMs would receive salary increases under the promotional-differential clause intended to prevent wage compaction. The City failed to offer evidence contradicting the Union's accounts of the bargaining history behind the promotional-differential clause or the three bonuses. Chief Negotiator Brown did not testify in support of the City's position.

B. <u>Department's Position:</u>

Several material reasons exist to deny the Union's group grievance, as follows:

1) Contractual-Statutory claim based upon MOU #14; Article 5.10 Promotional Differential Clause does not supersede LAAC Section 491 "Salary Step Placement on Assignment (promotion) to a Different Position in the City Service."

LAAC Section 4.91(a) starts out with, "*Whenever an employee is assigned or appointed from a position to another position, the following step placement procedures shall apply:*" That statement governs the time to apply the Promotional Differential to coincide with an employee's promotion, thereby limiting the application of the Promotional Differential to a single time upon each promotion. This is merely reiterated by MOU#14, Article 5.10/G, "*...employees who receive a promotion shall be moved to a salary step...*" Their new salary was already set up on their promotions to HDEM on October 15, 2017. The Grievant's new promotional salaries were considerably higher than 5.5% from their previous classifications. The requirement of the Promotional Differential Clause has been met.

Even if one would erroneously allow for a Promotional Differential to be applied a second time after one's promotion, this would not result in a rise in our case. That is because there is an absolute limitation of the amount of the Promotional Differential, as laid out in LAAC Section 4.91(a)(4) that "*in no case shall an employee be placed ...higher than the top step rate of the salary range for the new position.*" In the case of a flat rate salary as the one for HDEMs, the aforementioned "to step rate" is defined by LAAC Section 4.91(b)(2) as "*Flat rate salary amounts shall be considered to be the top step of the salary range for the new positions.*' It is noteworthy that these Subsections have never been mentioned and have never been addressed by the Grievants.

2) Promotional Differential (MOU #14, Article 5.10, G) Supervision Differential LAAC Section 462.2) Contextual Interpretation:

The supervisory relationship between a supervisor and his/her subordinates is an ongoing phenomenon, which is why the Supervisory Differential of LAAC Section 462.2 grants the supervisor the right to be continuously step-rated, resulting in adjusting the supervisor's compensation on an ongoing basis, whenever the base salary of the subordinates of that supervisor is changed. Contrary to the ongoing nature of a supervisory relationship, a promotion to a higher classification is a "one-time event." That is why the promotional differential (MOU #14, Article 5.10, G.) in connection with LAAC Section 4.91 only applies once when the promotion is granted, whereafter the salary of the promoted employee is not subject to any other application of the Promotional Differential until after the promoted employee is assigned to another class via another promotion.

b) <u>Grammatical Interpretation</u>

The first sentence of Subsection (a) of LAAC Section 462.2 Supervision Differential reads, "*a bone fide supervisory employee...shall be paid at a rate at the appropriate*

step," while not stating, "*...shall be paid at the appropriate step upon the appointment to a supervisory position* (sic!), thereby making the ongoing supervisory relationship – and not the one-time act of an appointment to a supervisory position – the reason for the repeated application of the supervisory bonus, whenever the salary of the subordinates of a supervisor is raised.

3) The Classifications compared to determine promotional-differential bonuses do not include the Union's request that the Department increase all HDEM's pay by 5.5% above the EMs and disregards that only Grievant De Anda was promoted from the position of EM to HDEM. Both Grievants were promoted and received a higher flat rate salary (De Ande 8.98 % and Loya 117 %) above the salary position of EM and GA.

4) There is no factual basis or support for the Union's claim of Chief Negotiator Brown's alleged oral broken promise that "everybody gets a 5.5% salary increase higher than the position promoted from, up and down the promotional ladder." Ms. Brown does not recall such a conversation; it cannot be supported and has no binding effect on the Department. The Department denies breaking any oral promises to the Union relied on to override the party's agreed written language of the Promotional Differential Clause.

VI.

DECISION

The dispute before the Arbitrator involves the Parties' different interpretations of their newly added Promotional Differential Clause to MOU Unit #14. The parties agreed that the purpose of their new promotional-differential clause was to address their common concerns on how best to prevent wage compaction between employees within certain job classifications who often found themselves making less money after being promoted into the higher classifications. Newly promoted employees would often find that the total sum of their previous salaries and bonuses was greater at the lower

classifications. The Promotional Differential Clause set forth in Article 5.10 (Salaries), G, states as follows:

> *Notwithstanding the rate provided for in LAAC Section 4.91, employees who receive a promotion shall be moved to the salary step (Step 2 or above) that provides a minimum of 5.5% increase over the rate received in the former position. As provided in LAAC Section 4.91, any regularly assigned bonus or premium compensation amounts shall be included in calculating the step rate for the former position and added to the new salary, if applicable, after determining the appropriate salary step rate for the new position.*

The Differential Clause clearly states that employees who receive a promotion shall be moved to the Salary Step (Step 2 or above) notwithstanding the rate provided for in LAAC Section 4.91 and given a 5.5% minimum increase over the rate received in the promoted employee's former position. The dispute is whether the 5.5% minimum rate increase and the additional three newly assigned bonuses received by the EMs are also included in the HDEM's salaries.

According to the Union, HDEMs are entitled to receive the new bonuses under the Promotional Differential Clause, but the City has failed to include the new bonuses when calculating the wage differentials between EMs and HDEMs. The Union relies on several explicit promises made at the bargaining table by the City's Chief Negotiator that "*everyone gets 5.5% above what their subordinates make.*"

The Union focuses on the unrebutted testimony of their Chief Negotiator, David Sanders, and Marco Rios, the bargaining representative for the Mechanics, in support of its position of Brown's assurances that: "*everyone up on the promotional ladder (including HDEMs), would get the three new regularly assigned bonuses received by subordinate employees based on the Promotional Differential Clause.*" Sanders and Rios

later sought further assurances from Brown after becoming aware that the Tentative Agreement ("TA") did not expressly list the HDEM or SEM employees. Although they were promoted from the same formerly held EM position, they were not receiving the same three newly assigned bonuses for performing the same work. Based on Brown's further clarification that HDEMs would be included, the Union entered into the parties' current MOU #14.

The Department disputes the Union's interpretation of what occurred and/or any alleged verbal assurances given by Angela Brown and directs the Arbitrator's attention to the salary notes of MOU #14, which applies only to the EMs. Salary notes BB, CC, and EE do not include or mention the HDEMs who are not qualified to receive bonuses and are specifically excluded under LAAC Section 462.2 based on their flat-rate bi-weekly salary.

LAAC Section 462.2 controls and supersedes MOU #14 Promotional Differential Clause, and the City is not obligated to include the three newly assigned bonuses in the HDEMs supervisor flat bi-weekly salary rate calculations. According to the Department, the MOU #14 Promotional Differential Clause applies only once during HDEMs De Anda and Loya's promotions, which occurred before the three bonuses became effective on July 7, 2019.

After careful consideration and review of the evidence record before me, including the prior arbitral decisions of Arbitrator Christopher Cameron (ARB Nos. 3956 and 4036) and unrebutted testimony of credible witnesses Sanders and Rios on implementation of the Promotional Differential Clause, the Arbitrator finds for the Union. The Employer (Los Angeles Police Department) did violate Article 5.10, G. of the Memorandum of Understanding #14 and Section 4.91 of the LAAC by failing to properly calculate the HDEM's salary based on what the EMs made after receiving three new regularly assigned bonuses.

When called upon to resolve a contractual dispute, the Arbitrator's primary role is to determine the parties' original intent and carry out their intent, even though one party may interpret the contract language differently. As a general rule of contract construction and interpretation, the plain language of a clear and unambiguous contract will be enforced by an arbitrator over the objections of a disputing party.

The evidence presented indicates that the parties were mutually concerned about "wage compaction" between certain promotable job classifications and expressly agreed to negotiate new and binding language under Article 5.10, G, known as the Promotional Differential Clause, to address this issue.

The Arbitrator finds that the Promotional Differential Clause requires that each employee promoted to the HDEM position be paid a minimum of 5.5% more than the rate paid to the highest-compensated subordinate employee holding the position of EM or SM, with bonuses paid to employees holding those positions rolled into their base pay.

The Arbitrator further finds that the parties negotiated the Promotional Differential Clause in good faith, with the clear intent that the HDEM's salary calculations include the three new bonuses received by the EMs as promised to all, "*up the promotional ladder,*" by the City's Chief Negotiator Angela Brown who did not testify in this matter.

Finally, the Union directs this Arbitrator's attention to similar issues previously presented before Arbitrator Christopher Cameron in ARB Case Nos. 3956 and 4036 involving *SEIU Local 721 v. LAPD.* Those cases were decided in favor of the Union and should be viewed as persuasive authority. Although the City has expressed respect for Arbitrator Cameron's service, it disagreed with his decisions, which held no persuasive authority as the Union requested. Case No. 3956 pertained to SEMs and not HDEMs.

As a general rule of contract interpretation in the use of prior arbitration awards, arbitrators will give clear contract language a meaning consistent with a prior arbitration award between the parties involving the same contract term, unless they believe the prior award is substantially flawed, which is not the circumstance before this Arbitrator. [1]

After carefully reviewing Arbitrator Cameron's well-reasoned arbitral decision in ARB No. 4036 involving HEDMs, I find numerous similar factual details between my findings and those of Arbitrator Cameron. Before me are the same parties, with the same bargaining history and identical wage compaction concerns involving the same job classifications as agreed upon in their Promotional Differential Clause under Article 5.10, Section G.

But more persuasive is the unrebutted and credible testimony by Union witnesses of the broken promises made by Angela Brown that the HDEMs were also eligible to receive the three new bonuses. This arbitrator finds Arbitrator Cameron's arbitral decision in ARB No. 4036 compelling and consistent with his own findings of fact and arbitral award, hereby incorporated by reference, and set forth below.

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[1] The Common Law of the Workplace – The views of Arbitrators – Contact Interpretation, p, 85, §2:16, 2nd ed, 2005.

AWARD

1. The Employer did violate Article 5.10, Section G of the Memorandum of Understanding #14 and Section 4.91 of the LAAC by failing to properly include the three new bonuses when calculating the wage differences between the EMs and HDEMs.

2. The appropriate remedy is as follows:

a. The Employer is hereby ordered to cease and desist from violating Article 5.10, Section G. of MOU #14 and/or Section 4.91 of the Los Angeles City Administrative Code.

b. Going forward, the Employer is ordered to pay affected HDEMs the Promotional Differential in a manner that takes into account both the 5.5% Promotional Differential and all applicable bonuses paid to the relevant job classifications and

c. Looking backward, the Employer is ordered to make whole the affected HDEMs. Such make-whole relief shall include, but not necessarily be limited to, back pay, as measured by the difference between what the HDEMs actually were paid and what they should have been paid, had both the 5.5% Promotional Differential and all applicable bonuses paid to the relevant classifications with appropriate interest thereon.

d. All arguments not specifically addressed by this Arbitrator have been fully considered and dismissed.

e. The Arbitrator will retain jurisdiction over this dispute to resolve any pay issues that may arise until April 30, 2024.

Dated: December 30, 2023

Respectfully submitted,

Claude Dawson Ames

Claude Dawson Ames, Arbitrator