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November 5, 2015

**Redacted for Publication**  
OPINION AND AWARD  
IN ARBITRATION PROCEEDINGS  
PURSUANT TO A  
COLLECTIVE BARGAINING AGREEMENT

In the Matter of a Controversy Between	)	
	)	
City of Palo Alto, Employer	)	
and	)	Maintenance Mechanics
<u>Service Employees Int. Union Local 521, Union</u>	)	Reclassification Grievance

**APPEARANCES:**

For the Employer:     Albert S. Yang, Deputy City Attorney  
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                                  250 Hamilton Ave.  
                                  Palo Alto, CA 94301

For the Union:         Anne I. Yen, Attorney  
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### **PROCEDURAL BACKGROUND**

The above-referenced matter was processed through the grievance procedure contained in the collective bargaining agreement (CBA) between the parties. Remaining unresolved, it was submitted to final and binding arbitration. The undersigned was selected as the arbitrator by mutual agreement of the parties. The matter was heard on September 17, 2015 in Palo Alto, California.

The parties stipulated that the matter was properly before the arbitrator and that all steps of the grievance procedure had been met or waived. The parties also stipulated that the arbitrator retains jurisdiction for the purpose of the implementation of the remedy in the event that the arbitrator grants in whole or in part the remedy sought by the union.

Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. Both parties were ably represented by their respective representatives. At the conclusion of the hearing, the parties chose to conclude their presentations by written briefs. Briefs were received on or before October 16, 2015 and the matter was submitted for decision.

### **ISSUE**

The parties did not reach a stipulated statement of the issue in this matter. The Union proposes that the issue is as follows:

Whether the Water Treatment Plant<sup>1</sup> Mechanics' request for reclassification should be granted, and if so, what is the proper remedy?

The Employer proposes the issue as follows:

1. Have there been significant, permanent changes to the jobs of the grievants, or are there significant discrepancies between the job content and the job description, such that reclassification is appropriate?
2. If so, is any retroactive adjustment to the grievants' wage range warranted?

The parties granted the arbitrator the authority to frame the issue. Therefore, the issue is formulated as follows:

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<sup>1</sup> The parties referred to the facility variously as the Water Treatment Plant, the Water Quality Control Plant, and the Plant. It will be referred to throughout this Opinion and Award as the Water Quality Control Plant (WQCP).

1. Did the Employer violate the collective bargaining agreement when it denied the Union's request to reclassify water treatment quality plant (WQCP) mechanics to a new classification of Plant Mechanics?

2. If so, what is the proper remedy?

**RELEVANT CONTRACT PROVISIONS**

**Memorandum of Agreement – City of Palo Alto and Service Employees International Union Local 521 – December 1, 2013 – December 1, 2015**

Article VII – Pay Rates and Practices

Section 5            Reclassification Requests

a. An employee or his/her representative may request in writing a re-evaluation of his/her job based on significant permanent changes in job content or significant discrepancies between job content and classification description. The request must be in writing, contain justification and may be made only on an annual basis during the period of September 10 through October 10...The Human Resources Director or his/her designee will initially respond to such requests within ninety (90) calendar days by notice to the employee and the union: however, the timeline may be extended if necessary. Such response shall include any reclassification to a different classification or changes in description that the City believes are warranted and any related changes in applicable pay range or steps...If reclassification is approved and results in an increase in salary, it shall be retroactive to the date the Employee or Union filed the request for the reclassification.

b. If the employee or Union disagrees with the accuracy of the description of duties resulting from the study conducted pursuant to subsection (a) of this Section or with the wage range or steps assigned by the City as a result of the study, the employee or Union may, within (10) ten City business days or delivery of notice of such determination, appeal such decision under step IV of Article XIX, Grievance Procedure.

c. In a dispute under...section 5(b) above, the arbitrator shall render his or her decision on the appropriate wage range within twenty-one (21) days after the initial hearing date. The same time line will be observed for disputes over the accuracy of the revised classification description...In reaching a decision on wage range and steps under Section...5(b) above, the arbitrator shall base his or her award on the factors traditionally taken into account in the establishment of compensation. When deciding a dispute over the accuracy of the revised classification description under section 5(b) above, the arbitrator shall identify the modifications of the pre-existing classification necessary to accurately reflect the permanent changes if any, that have been implemented. Upon receipt of the arbitrator's award, the City shall implement the revised classification and wage range or steps as provided in the award except as provided under subsection 5(c)

of this section below. Notwithstanding an arbitrator’s award pursuant to any appeal process, the City retains the right to forego implementing the changes and the proposed changes shall revert to the status quo as it existed before those changes in duties occurred or were proposed.

d. An employee may submit a request for reclassification for the same classification no more than once every twenty-four (24) months.

Section 8            Total Compensation and Survey Database

a. Management and the Union have agreed to a compensation survey database structure which identifies specific benchmark classifications for job families, classifications with the job families of each benchmark classification, survey agencies and survey classification matches. Survey cities include: Alameda, Berkeley, Daly City, Fremont, Hayward, Mountain View, Redwood City, San Jose, San Mateo, Santa Clara, S. San Francisco, Sunnyvale.

If the employer list will not permit the production of a survey report that includes data from at least four (4) employers that employ employees in a classification comparable to the classification surveyed by the City, neither party is precluded from bringing forward information on other employers in the relevant recruitment area that employ workers in a comparable classification so that data from at least five (5) surveyed employers will be included in the study, if feasible. Such employer may include any public or private employer.

The database is intended to provide one source of information concerning how the compensation paid to employees in bargaining unit job classifications compares to that paid by other employers. The City will update the survey database and send the Union a copy six weeks before expiration of this agreement. This survey will be considered in connection with special adjustment proposals in successor agreement negotiations. By agreeing to a survey database neither Union nor Management is under obligation to propose to agree to special adjustments.

Appendix A-1    Summary of Market Adjustments and Salary Increases

Benchmark Title ( <b>Bold</b> ) Job Family Positions (not bold)	Market Survey Results Base + Cash + Ins + Ret. Med	Total City proposed Market Adj.
<b>Maintenance Mechanic</b>	-0.2%	0.2%
<b>WQC Plant Operator II</b>	-3.8%	3.8%
MAINT MECH*	-10.0%	10.0%

\*Special adjustment to address recruitment / retention or inadequate comparables

## FACTS

### The City Employs Maintenance Mechanics (MM's) in its WQCP and in its Utilities

**Department:** The Employer operates a wastewater treatment facility that services residents and businesses in the City of Palo Alto as well as other nearby cities and unincorporated areas. The plant currently employs seven MM's and a lead mechanic. It is part of the Public Works Department. The City also employs MM's in its Water-Gas-Wastewater (Utilities) department. There are currently two incumbents.

Historically, the two groups of MM's were covered under a single classification with a single job description. The current job description is summarized as follows:

Under close supervision, performs maintenance and repairs as assigned on mechanical and electrical utility components and checks proper function of newly repaired and installed equipment.

In the Distinguishing Characteristics section of the job description, duties-in-common are listed, as well as ones that apply specifically to one or the other.

WQCP mechanic [Employee A] testified about the difficulty, complexity, and physical challenge of the WQCP MM job. He provided photographs and descriptions of the many large pieces of equipment that the mechanics install, service, repair, remove, reinstall and calibrate. [Employee A] testified as follows:

...in certain situations we are in lots of confined spaces, we work on a lot of large heavy equipment, it can be a very dangerous job at times.

He also contrasted his job to what he had observed at the utility mechanic shop:

I visit the mechanics at the utility group, and it just appears to me that we work on a lot different scale of equipment. They work on small engines as far as I know, like concrete saws and stuff like that. I know they weld on gas pipes, but we work in a treatment plant directly related to wastewater.

**The MM Classification has a Unique History:** Unlike other classifications in the City, the MM classification has two class codes. According to former manager of labor relations [Employee B], this unique setup allowed for the payment of two different pay rates. She testified as follows:

..the utility maintenance mechanics have to perform welding on live gas lines. That is a very dangerous and difficult task. You have to get a special certification to be able to weld on live gas. At some point the City and SEIU negotiated to provide 4% welding pay

for the utility mechanics. So for some period of time the utility were paid more than the water quality.

[Employee B] testified that, as far as she was aware, there are no other classifications in the SEIU bargaining unit that are split between two or more departments and have different base pay rates.

**The WQCP Mechanics File for a Reclassification to create a new Plant Mechanic class:** In October 2011, the WQCP MM's filed a request to be reclassified to Plant Mechanic as a classification separate from the utility MM's. Included in the filing was a request that the City modify salaries to reflect this reclassification. The City initially denied the request in January 2012 and the Union filed a grievance. As a settlement to the grievance, the request was withdrawn and the Employer agreed to waive the two-year waiting period to allow the MM's to file an amended request.

In October 2012, the WQCP's filed a new timely reclassification request under the provisions of the CBA Article VII Section 5(a). In support of this request, the Grievants submitted a statement signed by the Manager, Assistant Manager, and Former Assistant Manager of the WQCP. In explaining why he signed the statement, Manager [Employee C] testified as follows:

I felt that being more specific about wastewater treatment plants would be more helpful when the city goes out to recruit candidates and when a salary survey consultant is comparing one agency to another the more accurate information they have the better it would be for them.

In 2012, the Grievants also submitted a "red-lined" version of their job description. It removed sections pertaining to Utilities mechanics and added more specifics related to WQCP mechanics.

For the hearing, MM [Employee A] also submitted a second revised job description that he characterized as reflecting more accurately the work of the plant mechanics.

Over the next year and half, the City' human resources department studied the request, received input from the utility mechanics, toured the plant, and exchanged points of view with the WQCP mechanics. The matter remained unresolved.

**The Parties Presented Conflicting Survey Data at Hearing:** In September 2012, the Grievants conducted their own compensation survey of comparable classifications at comparable agencies. They concluded that the City WQCP MM's were 13.7% below market. Their survey was introduced into the hearing record.

[Employee A] testified that he conducted the survey himself using information publicly available on websites and following up with phone calls to agencies when necessary. The City did not conduct its own survey in response to the reclassification request. However, it conducted a survey for this classification in the fall of 2013 in preparation for bargaining. The Employer also asked consultant Doug Johnson to prepare a survey of comparable data in preparation for the arbitration hearing. Mr. Johnson's survey was designed to take a retrospective "snapshot" look at the appropriate agencies in October 2012.

In addition to these two surveys, a market survey conducted by the Employer in 2013 was introduced into evidence. It was completed in September 2013, in anticipation of contract negotiations.

The two 2012 surveys coincide in many aspects. The surveyed jurisdictions have five in common: the cities of Daly City, Hayward, San Jose, South San Francisco, and Sunnyvale. The Employer's survey includes a sixth compared jurisdiction: San Mateo. San Mateo, as noted above, is one of the comparable jurisdictions contained in the parties' CBA.

The Union did not survey San Mateo, apparently concluding that it had no comparable classification. However, the Employer used the San Mateo Plant Mechanic II classification, both in its 2012 and 2013 surveys.

The two surveys differ in the figure used for Palo Alto compensation. The Union's survey costs medical at \$1,431 per month<sup>2</sup>. The Employer's chart shows health at \$1,664. Mr. Johnson testified that he used the January 2013 figure that had been announced in October 2012 in his survey. [Employee A] testified that he used the number available at that time on the Palo Alto human resources website.

In Mr. Johnson's survey, he found that other Palo Alto benefits - including dental, life, long term disability insurance (LTD)<sup>3</sup> and employee assistance program (EAP) – totaled \$304. By [Employee A]'s survey, other benefits – including dental, life and LTD – totaled \$229.

As a result of these differences, the total Palo Alto compensation for MM listed by the Union's survey was \$7,969. Total compensation in the Employer's survey was \$8,278.

With regard to the compared jurisdictions, Mr. Johnson used a higher base salary and a higher medical insurance figure for Daly City than [Employee A]. The result is that the total compensation figure for that comparator was \$8,347 according to the Employer, but only \$7,481 according to the Union<sup>4</sup>.

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<sup>2</sup> All figures are monthly, unless otherwise noted.

<sup>3</sup> The figure used by Mr. Johnson for LTD was \$77. This appears to be an error, since the City's own survey a year later lists LTD at \$11.

The parties used different figures for another compared jurisdiction, Hayward. While the base salary used was the same, the Union included deferred compensation and employer paid member contribution (EPMC) and the Employer did not include these elements. The Employer introduced into the record a signed Side Letter of Agreement between the City of Hayward and SEIU Local 1021. That agreement indicates that the deferred comp contribution and EPMC were no longer in effect as of July 2012.

There is also a discrepancy between the figure used by the Employer for Hayward dental coverage (\$135) and by the Union (\$169). The Side Letter referenced in the paragraph above also indicates that the dental insurance agreement was replaced by a new agreement.

As a result of these differences, the Union's total compensation figure for Hayward was \$9,151 while the Employer's was \$8,570.

In the case of comparator South San Francisco, the Union used base pay plus a 7.5% "grade III certificate" for its salary figure. The Employer calculated that figure without the certificate pay. Total compensation as calculated by the Union was \$9,061. Total compensation as calculated by the Employer was \$8,635.

Finally, looking at Sunnyvale, the only discrepancy was a relatively small one in the area of benefits. The Employer calculated the Sunnyvale benefit package at \$1443, while the Union calculated it at \$1548. The total compensation figure used by the Union was \$9,344. The one used by the Employer was \$9,241.

**In 2013 CBA Negotiations, the WQCP MM's Receive a 10% Special Adjustment:** In the fall of 2013, the parties conducted successor bargaining. In the new agreement, effective December 1, 2013, the WQCP MM's received a 10% special adjustment. They were also moved into the WQCP "family" of classifications and designated as a benchmark classification that would be surveyed in preparation for future negotiations. The new CBA was adopted in March 2014, and it was at that point that the new wage rates went into effect.

As noted above, the appendix reflecting this agreement lists the classification with an asterisk. The asterisk links to a note indicating "special adjustment to address recruitment / retention or inadequate comparables."

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<sup>4</sup> The Daly City figure is identical with the one utilized by the Employer a year later.



[Employee B] testified that she recommended to the City’s negotiators that they offer this 10% adjustment. A nearby sanitation district was recruiting for several positions, she noted, and WQCP management was concerned that they might lose several experienced employees. The City made this offer despite the fact that the City’s own compensation survey showed that the plant MM’s were only .2% below market.

[Employee D] is the Assistant Manager of the City Department of People, Operations and Strategy (formerly Human Resources). She testified that the comparable agencies are negotiated with the Union and are spelled out in the CBA<sup>5</sup>.

[Employee D] testified that the City’s policy is to provide equity adjustments only when the classification is 5% or more below the median. However, the CBA chart, excerpted above, indicates that each job family received an equity adjustment equal to its percentage below median as determined by the City’s market survey. These adjustments were given regardless of whether the classifications were within 5% of the market or not.

**The City Denies the Reclassification Request a Second Time:** In a Memorandum to the Union dated May 6, 2014 the City denied the reclassification request. The conclusions of that Memo are as follows:

There have been 2 classification studies requested and performed for the WQCP Maintenance Mechanics since 2011. Both of the studies recommended no change in classification or title because the existing classification is comparable to other agencies and appropriately describes the essential functions, knowledge, skills and abilities of Maintenance Mechanic work in the Utilities and Public Works Departments. The job description updates proposed by the WQCP Mechanics (excluding deletion of specific Utilities duties) were minor and would not substantively change the job description, although they would serve to improve the job description. The reclassification request was therefore denied.

Because the request was denied, no corresponding change in compensation was appropriate. However, the compensation concerns of the WQCP Mechanics have since been addressed through a separate collective bargaining agreement. The City and SEIU negotiated a successor MOA in later 2013 / early 2014 that includes an agreement to provide the WQCP Maintenance Mechanics with a 10% increase as a “special adjustment to address recruitment/retention or inadequate comparables”...In this case, the bargaining history shows that the City was concerned about recruitment and retention issues of the plant mechanics. This agreement was unrelated to the reclassification request...

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<sup>5</sup> In a Memorandum in May 2014 to the Union from [Employee E] (Chief People Officer) and [Employee F] (Manager Employee Relations) the City outlined its thoughts about why special districts are not included in the list of comparable agencies. “Palo Alto has deliberately used only cities in compensation surveys because... municipalities tend to be structured similarly and have similar revenue opportunities and restrictions.”

### **UNION’S POSITION**

The Union contends that it has proved a significant difference between the job of plant mechanic and utility mechanic. The fact that the employees work in different departments at different base rates of pay suggests that they should be in separate classifications.

The Union argues that the compensation for the WQCP mechanics has been below market and needed to be adjusted. The job description should be updated and made specific to the plant mechanic for recruitment and retention purposes.

Even conceding the change in the Hayward agreement, the Union asserts that the Palo Alto plant mechanics were still 7.5% below the median as of October 2012.

The Union asks the arbitrator to order the City to revise the job description and change the title to Water Treatment Plant Mechanic or Water Quality Control Plant Mechanic. The Union also asks that the arbitrator order back pay from October 9, 2012, through March 31, 2014, with interest.

### **EMPLOYER’S POSITION**

The Employer contends that this request for a new classification is most appropriately addressed at the bargaining table, not through the grievance procedure.

The contract language lays out clearly the burden the Union must meet. It must show “significant permanent changes in job content or significant discrepancies between job content and classification description.” The Employer argues that the Union has not met this burden. The fact that new duties have been added does not require a new job description.

Moreover, the Employer asserts, the duties described by a union witness are already covered in the existing job description.

The Employer argues that the Union’s survey data is rife with errors, and that the plant mechanics were at market median in 2012 and 2013. There was uncontested testimony that the City’s practice is to make equity adjustments only in the event that the classification is 5% or more under the market median.

Simply correcting the errors in the Union’s data places the City plant mechanics within 4.8% of the median.

The City asks that the arbitrator deny the grievance. Alternatively, if the grievance is sustained, the City asks that the arbitrator deny the request for retroactive compensation.

### **DISCUSSION**

**The Contract Language is Broad Enough to Cover This Dispute:** The Employer argues that the language in Article VII Section 5 is not intended to apply to the circumstances of the Union proposing a new classification. This argument has merit. There is some appeal to the contention that this request by a class of employees for a new classification should be addressed at the bargaining table. And, as noted in the following analysis, to some degree that is exactly what happened. But the Employer, in responding to the WQCP maintenance mechanic request beginning in 2011, treated it as a properly filed reclassification request and applied its interpretation of these contract provisions throughout the duration of this dispute. This arbitration decision will follow along these lines.

Article VII Section 5 (c) gives the arbitrator broad authority to craft a job description and decide on a “wage range and steps.” In awarding pay changes, the arbitrator “shall base his or her award on the factors traditionally taken into account in the establishment of compensation.”

The relevant factors in this dispute are the changing job duties and external market comparators.

**The Union Did Not Meet Its Burden to Prove the “Significant Permanent Changes in Job Content” Factor:** Strong and detailed testimony was presented about the nature of the MM job at the water treatment plant. The Union certainly proved that not every duty or piece of equipment that the MM’s work on at the plant is covered in the current job description. It also demonstrated that there are parts of the current job description that do not apply to the WQCP.

But the Employer’s rejoinder that most of what the Union’s witness described is covered in the description, and that job descriptions by their nature cannot be totally comprehensive, is on point. Job descriptions cannot be changed every time there is a technological change or change in work method.

Where the Union’s case also falls short, on this point, is in the comparison to the utility mechanic. Little if any direct evidence was presented on the nature of that job. It is not enough to present anecdotal evidence of plant MM’s observing utility mechanics in their workplace. The undersigned cannot conclude that the WQCP MM job is necessarily more complex than that of the utility mechanic.

**The Union Did Meet Its Burden on the Issue of Market Comparisons:** The evidence is clear that the plant MM's are in a separate compensation market than their utility co-workers. The actions of the Employer, beginning in 2012, prove this to be the case. WQCP management grew increasingly concerned that plant MM's would leave the City for higher-paying comparable positions, especially at special districts that operated under a different funding model than that of the City.

When the Grievants resubmitted their reclassification request in 2012, it was supported by plant management. The managers did so explicitly because of the problems of recruitment and retention. Since plant MM's had been grouped together with utility mechanics in prior surveys, the Grievants and their managers believed that this common classification resulted in an inadequately competitive salary.

While continuing to resist splitting the classification, the City took an alternative approach. At the bargaining table in 2013, the City negotiators brought forward a recommendation from their human resources personnel that the recruitment and retention issue be addressed at the table. The City had surveyed the plant MM classification separately from the utility mechanics, and determined that the plant MM's were only .2% below the market. Nonetheless, the City suggested two things: 1) to place the WQCP MM's in the WQCP family for survey purposes, and 2) that the WQCP MM's be given a 10% "recruitment and retention" pay adjustment. This proposed increase was not extended to the utility MM's, who received a .2% increase due to the City's survey of comparable classifications in comparator cities.

This proposal for a 10% adjustment was accepted by the Union, became part of the agreement, and went into effect in April 2014. This special agreement required an asterisk note in the CBA. It would be the only place in the agreement, including hundreds of SEIU-represented classifications, where the base pay for employees in a common classification would vary depending on their department.

It is this special agreement at the bargaining table, and the recruitment and retention issues leading up to it, that strongly supports the Union's position that the classification should be split. For all practical intents and purposes, the classification has already been divided. In essence, the job market has dictated to the City that it carve out the plant MM's into a separate classification.

The market factors trump the job duty factors noted above. The preponderance of the evidence is that the plant MM's should have their own classification and job description. According to the record, the parties have already taken steps to discuss possible revisions to the job description. The arbitrator is confident that the parties can complete that process and come up with a new mutually agreeable Plant Maintenance Mechanic job description.

**Since the CBA Was Violated, It is Appropriate to Award a Financial Remedy for a Limited Time Period:** Had the Employer granted the reclassification request when it was proposed for a second time in 2012, it is reasonable to conclude that a pay increase would have accompanied that reclassification. It is the responsibility of the undersigned to determine the extent of the remedy required to make the Grievants whole.

It is not a matter of dispute that the pay inadequacy was remedied going forward by the 10% adjustment in April of 2014. So this arbitration award will involve single sums to remedy the “gap” between when the pay should have been adjusted and when it was actually adjusted.

The Union has requested pay to cover the period from October 2012 through the end of March 2014. This request is based on the Union’s survey conducted in October 2012. However, a second survey was conducted in October 2013. It was conducted by the City, using bargained criteria. There was no alternative survey data collected and presented by the Union at that time.

The City’s survey in October 2013 concluded that the plant MM’s were only .2% below the market median. There is no contrary data in the record. The undersigned concludes that, whatever shortfall existed in October 2012 had been eliminated by October 2013. The de minimis nature of .2% and the built-in margin of error in any survey lead to the conclusion that no remedy is required for the period from October 2013 until April 2014.

**The Arbitrator’s Independent Analysis of the Record Leads to the Conclusion That the Affected Employees Were 5.9% Below the Market Median:** Any compensation survey is a snapshot of a point in time. A survey taken just a few months earlier or a few months later can produce significantly different results. What follows is the arbitrator’s best effort to sort out the differences between the Employer’s 2012 survey and the Union’s 2012 survey and derive a reasonable conclusion.

The Union has suggested that the Employer’s survey of 2012 compensation should be disregarded since it was conducted after-the-fact, in preparation for the arbitration hearing. The undersigned was persuaded that, in this instance due to the continuing availability of accurate historical data, the Employer’s survey is valid and will be considered.

The first point of divergence is that the Employer’s survey included one additional comparator, the City of San Mateo. The Union asserted that San Mateo did not have a comparable job classification. However, San Mateo is one of the bargained comparators and the Union did not object to its inclusion in

the City's plant maintenance mechanic survey the following year. Therefore, the City's figures for San Mateo will be included in my analysis.

One of the critical differences is that the City uses a health benefits contribution figure for Palo Alto of \$1664, whereas the Union uses the figure of \$1446. As a result, the City's total compensation figure for Palo Alto is significantly higher than that calculated by the Union. Documents and testimony made it clear that the higher number in the City's total was that projected to take effect on January 1, 2013. The Union's was a look at the total compensation in effect as of October 2012. Since the survey is a snapshot of a point in time, my conclusion is to use the Union's lower figure in this instance.

The second major difference is in the base salary for Daly City. The Employer, against its own presumptive interest, uses a higher base salary than that used by the Union. There was no underlying data presented to resolve this discrepancy. The undersigned concludes that the higher salary presented by the Employer was most likely a negotiated increase that was not yet in effect. Based on the "snapshot" theory, the undersigned concludes that the Union's lower figure is the most reasonable to use.

The parties also disagreed, initially, with the Hayward total compensation figure. However, when the Employer presented evidence of a signed agreement that supported the City's survey numbers, the Union conceded that point. Therefore, the lower number presented in the City's survey will be utilized in this instance.

The final substantive difference presented was the South San Francisco salary figure. The Union included certification pay in the salary figure, while the Employer excluded it. It is traditional in compensation surveys to consider certification pay as a separate item from base salary. Since City of Palo Alto plant MM's are not required to have certification, the undersigned concludes that this amount should be excluded from base pay calculations. Therefore, the Employer's lower figure is adopted.

In the case of the City of Sunnyvale, there is a relatively minor discrepancy between the Employer and the Union's benefit figures. There was no underlying data presented to resolve this difference. The chart below picks a midpoint between the two figures. It should be noted that using either party's figure or the middle figure does not change the median in this instance.

Putting all of this data into a chart and using the median comparison technique favored by both parties, the end result is that the Palo Alto WQCP MM's were 5.9% below the market median in October 2012.

<b>Market snapshot of Palo Alto Maintenance Mechanic in 10/12</b>	<b>Union Figure 10/12</b>	<b>Employer Figure 10/12</b>	<b>Most Reasonable, with ranking 10/12</b>
<b>Palo Alto</b>	<b>\$7,969</b>	<b>\$8,278</b>	<b>\$7,969</b>
Daly City	\$7,481	\$8,347	\$7,481 (5)
Hayward	\$9,151	\$8,570	\$8,570 (3)
San Jose	\$6,984	\$6,985	\$6,985 (6)
San Mateo		\$8,366	\$8,366 (4)
South San Francisco	\$9,061	\$8,635	\$8,635 (2)
Sunnyvale	\$9,344	\$9,241	\$9,292 (1)
Median			\$8,468
Palo Alto % below Median <sup>6</sup>			5.9%

**A Financial Remedy is in Order:** In the agreement reached in successor CBA negotiations at the end of 2013, the parties implemented equity adjustments for all classifications linked to any benchmark classification that was below the market median. Contrary to the testimony of a management witness that the City’s practice was only to make market adjustments when the classification was at least 5% below median, these adjustments were of an amount exactly equal to the percentage below median. It is this method then that will be utilized in calculating the remedy in the grievance.

For reasons stated above, the make whole remedy in this instance does not require payment covering the period after September 30, 2013. The individuals who should receive the remedy are those who served in the classification during the identified period of time, and who are still employed by the City at the time of this award. The amount is to be calculated as if the base pay of the individuals had

<sup>6</sup> In a column of six numbers, the median is the midpoint between the third highest and fourth highest number.

been increased by 5.9% from October 9, 2012 through September 30, 2013. The undersigned rejects the Union's request for interest. Equity adjustments are based on a variety of judgment calls and it would not serve the cause of equity to introduce the precision of back interest into this particular equation.

**AWARD**

1. The Employer violated the collective bargaining agreement when it denied the Union's request to reclassify water treatment quality plant (WQCP) mechanics to a new classification of Plant Maintenance Mechanic.
2. The Employer shall create a new classification of Plant Maintenance Mechanic to include all WQCP maintenance mechanics and exclude utilities mechanics.
3. The Employer and the Union shall meet and confer on a revised job description for the new classification of Plant Maintenance Mechanic.
4. WQCP maintenance mechanics shall each receive a lump sum payment equal to 5.9% of the total base pay they individually received from October 9, 2012 through September 30, 2013. In order to receive this lump sum payment, employees must have been employed as a Palo Alto WQCP maintenance mechanic during some or all of that time period and also be employed by the City of Palo Alto on the date of this arbitration award.
5. The arbitrator retains jurisdiction over the implementation of the remedy.



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Paul D. Roose, Arbitrator

Date: November 5, 2015