

## EXHIBIT 9-A

### MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

#### *MEMORANDUM*

DATE: April 8, 2005

TO: Rob Cline, Dave Dettman, and Tom Lindberg  
Tim McCormick, LIUNA Local 270 Representative

FROM: David A. Berger, General Manager

SUBJECT: Grievance Determination—General Unit MOU, Article 10 (Health Benefits)

#### Summary of Grievance Determination

This grievance was submitted by Laborers' International Union of North America, Local 270, on behalf of three General Bargaining Unit employees, who contend that the District has not properly interpreted the health benefit provision of the General Unit Memorandum of Understanding currently in effect. The grievance was processed in accordance with the procedure set out in the MOU, which includes formal determination by the General Manager following a meeting with the effected employees and their representative. The outcome of this grievance determination is that it is denied for the reasons set out in this memo.

#### Facts Related to Grievance Determination

The Monterey Peninsula Water Management District ("District") and its General Staff Bargaining Unit ("General Unit") entered into a Memorandum of Understanding ("MOU") covering employee compensation and other employment terms for the two years commencing July 1, 2004. The General Staff Unit is represented by Laborers' International Union of North America, Local 270 ("LIUNA/270"). Article 21 of the MOU establishes the procedure by which a General Unit employee(s) may claim a grievance in a circumstance where he/she believes the District has misinterpreted or violated the MOU. Article 21 calls for the effected employee(s) to discuss the grievance informally with his/her supervisor and, if unresolved, submit it in writing to the General Manager for review and determination. The employee is entitled to be represented in pursuing a grievance, and can appeal a General Manager determination to the District Board.

Article 10 of that MOU sets out insurance coverage for medical, dental, short- and long-term disability and other health benefits provided to employees covered by the General Unit. MOU Article 10 is set out, below, in its entirety. Paragraphs five and six are

relevant to, and referenced in this grievance determination, the language of which is highlighted by italics.

“ARTICLE 10 HEALTH BENEFITS

Medical, dental, vision, life insurance, survivor benefit, short-term disability insurance, long-term disability insurance, and an employee assistance plan shall be provided for all regular employees, introductory employees, and their eligible dependents. Medical insurance will also be provided to all retirees and their eligible dependents.

The District shall pay 100% of premiums for life insurance, survivor benefit, long-term disability insurance, and the employee assistance plan premiums for all regular and introductory employees. The District will also pay 50% of the premium for short-term disability insurance. Employees will be required to pay the other 50% of that premium.

The District will obtain a quote for short-term disability insurance that reduces the use of sick leave prior to entitlement to the benefit. The parties agree to reopen this agreement to discuss implementation of this benefit to be effective no sooner than 09-01-04. The increased costs of this benefit must be paid 100% by the employee.

Effective July 1, 2004, the District shall contribute \$581.86 per month per participant towards the cost of health (medical, dental and vision) premiums.

*The District shall pay the following amounts to employees as an increased health premium. However, should the below-designated amounts exceed the health premium increases, the excess amount shall be paid to the employee in the form of a salary increase. Any salary increase that is paid in this manner shall not be diminished by future increases in health premium costs.*

*January 1, 2005: \$120.00 per month*

*January 1, 2006: \$130.00 per month*

*Employees who have health coverage available through another family member may opt out of the District health plan, and the District shall reimburse the employee for that portion of the premium cost which is incurred, if any, to cover the employee under his/her family members' medical plan. In no event will reimbursement under the opt-out provision exceed 75% of the District contribution toward employee health premiums. This opt-out provision will be cancelled in the event the District transitions to a medical provider that requires an employee participation rate that would, by necessity, include employees who had previously opted out of health insurance through the District.*

The parties will meet and confer during the term of the agreement to review the possibility of changing coverage within the LIUNA Trust.”

In a February 15, 2005 letter (Exhibit A) to the District’s Human Resources Analyst Cynthia Schmidlin, LIUNA/270 Representative Tim McCormick stated that according to his interpretation of the MOU, the District should have provided to LIUNA/270 represented employees Dave Dettman, Rob Cline and Tom Lindberg “the full \$120 (per month) increase allotted because none of the increase was effectively used for (health/medical) premium costs” since they exercised the General Unit health/medical insurance opt-out right under MOU Article 10, paragraph six. McCormick offered to discuss this issue informally with Schmidlin, and attached a formal grievance to his letter for use if it became necessary. Schmidlin sent a memo to McCormick, Dettman, Cline and Lindberg (Exhibit B), advising that following their March 4, 2005 meeting she consulted with the District’s Administrative Services Director/CFO, Rick Dickhaut, and that they (Schmidlin and Dickhaut) disagreed with the LIUNA/270 interpretation of the MOU. The Schmidlin memo states their opinion that the \$120/month increase in District contribution to the General Unit health/medical premium LIUNA/270 contends is owed to Cline, Dettman, and Lindberg as additional compensation “can’t be applied twice for those opting out, once to raise the 75% cap and again as extra reimbursement if they are short of the maximum reimbursement amount.”

On April 1, 2005 I conducted a meeting on this grievance, which was attended by each of the individuals named above. In the meeting McCormick made the following points in support of their position: 1) LIUNA/270 and District negotiators discussed and understood in reaching agreement in 2004 on the new MOU that any General Unit employee who chose to opt-out of the health/medical plan, would receive the full \$120 amount; 2) the negotiators further understood that a two-tier salary for different employees in the same job classification could not occur, as the District would provide the \$120/month to an opt-out employee through a stipend or 457 contribution; and 3) it is unfair and inequitable for the District to receive a “windfall” savings at the expense of General Unit employees who opt out of the health/medical plan.

In response to my questions, McCormick responded that no “side letter” existed to confirm this informal understanding. He also explained that the amount of increase in their respective spouse’s health/medical insurance premium since the MOU went into effect was less than the incremental adjustment in the 75% reimbursement cap to which Cline, Dettman and Lindberg are entitled under Article 10, paragraph six. Finally, in response to my question, each of the three employees advised that they did not confirm with Dickhaut or Schmidlin LIUNA/270’s informal understanding of how the \$120/month would be applied to them, prior to their decisions to opt-out of the District health/medical insurance plan.

At my request Schmidlin and Dickhaut confirmed for the record that their position on the grievance is as described in Exhibit B. Both stated that they participated in the current MOU negotiation, and they expressed having no recollection of the LIUNA/270-

described informal understanding nor of discussing how the \$120/mo adjustment would affect paragraph six opt-out employees.

#### Analysis, Findings and Conclusions Related to Grievance Determination

The key issue at dispute in this grievance appears to be whether or not under Article 10, an employee who chose to opt out of the District health/medical plan would receive the paragraph five increase as compensation, *in addition* to the benefit provided in paragraph six. Both paragraphs are entirely new, as similar language did not exist in the prior MOU. On the one hand, LIUNA/270 and the effected employees argue that the parties reached an understanding during 2004 MOU negotiations that the two clauses were directly linked as it relates to an employee who chose to opt out. In other words, opt-out employees should receive the *full* monetary benefit of the \$120/month District health/medical plan premium contribution adjustment, like other General Unit employees who are covered by the District health/medical plan. Specifically, they assert that none of the opt-out employees received any benefit from the \$120/month District medical/health plan contribution increase, because their spouses' plans premiums did not go up. Therefore, LIUNA/270 and the effected employees contend that they are entitled to receive the full \$120/month as additional compensation.

On the other hand, the District's representatives in the 2004 MOU negotiation assert that no such informal understanding was reached. Specifically, they contend that General Unit employees who opted-out of District health/medical coverage are entitled only to the benefit adjustment which is stated in paragraph six, i.e. reimbursement of the opt-out employee's portion of the family health/medical plan premium, not to exceed 75% of the District maximum contribution—including the \$120/month adjustment thereto provided in the 2004 MOU.

An objective observer could see both of these conflicting interpretations of Article 10 of the MOU as rational and reasonable. However, in the absence of any written evidence to support the LIUNA/270 position, there appears to be no basis to logically interpret Article 10 in the effected employees' favor. Neither paragraph five nor paragraph six, contains language entitling an employee who has opted out of the District health/medical plan, to have the \$120/month increase added to the maximum reimbursement amount for coverage under his/her spouse's health plan, **and** to give the employee a stipend or 457 contribution equal to any unused portion of that \$120/month adjustment.

Based on the foregoing conclusion, the LIUNA/270 grievance referenced herein is denied.

Grievance Determination Appeal Procedure

Article 21 of the MOU entitles the effected employee(s) to appeal this grievance to the Monterey Peninsula Water Management District Board of Directors. The appeal must be filed with the Clerk to the Board of Directors. There is no time limit in Article 21 within which this appeal must be filed.

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David A. Berger  
General Manager

Attachments (2)

cc: Rick Dickhaut, Administrative Services Director/CFO  
Cynthia Schmidlin, Human Resources Analyst  
Arlene Tavani, Executive Secretary/Clerk to the Board of Directors