

EXHIBIT 9-B

State of California
Department of Industrial Relations
State Mediation & Conciliation Service
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July 24, 2005

Ms. Cynthia Schmidlin
Human Resources
Monterey Peninsula Water
Management District
5 Harris Court, Building G
P.O. Box 85
Monterey, CA 93942-0085

Mr. Tim McCormick
LIUNA Local Union 270
640 Eaton Street
Santa Cruz, CA 95062

Monterey Peninsula Water Management District

In the Grievance Filed by LIUNA
On Behalf of
Rob Cline, et al

Findings
and
Recommendation

Dear Parties:

The grievance appeal of LIUNA on behalf of the members of the Union who chose to opt out of the Health and Welfare plan was heard by the hearing officer on June 24, 2005. The Grievants were represented by Tim McCormick of LIUNA Local Union 270. The District was represented by David Berger, Cynthia Schmedlin and Rick Dickhaut.

FINDINGS:

1. The grievance was properly before a duly appointed Appeals Hearing Officer and both parties to the dispute have asked that I hear the appeal and issue a recommendation.
2. At the conclusion of the hearing, the Hearing Officer shall prepare a record of the proceedings and prepare findings, conclusions and decision.
3. Following the filing of the recommended findings and decision of the Hearing Officer with the Board, the Board shall adopt such recommended findings or conclusions or shall reject the recommendations of the Hearing Officer and adopt its own findings, conclusions after a review of the record. The decision of the Board

will be final.

4. MPWMD and LIUNA entered into a Memorandum of Understanding covering the employees of the General Unit. The term of the MOU was for two years beginning July 1, 2004 and ending June 30, 2006.
5. Article 10 of the MOU outlines insurance coverages for medical, dental, and other benefits to be provided to employees of the General Unit.
6. The paragraphs in question within Article 10 Health Benefits are as follows:
"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, 2005: \$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 contributions 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."

7. The District expressed their concerns about creating a two tiered salary schedule, which would set a precedence, should payment be made to the employees as an addition to the salary schedule.
8. A similar program was made available to members of the management unit whereby they were allowed to receive some form or reimbursement.
9. The parties to the MOU came away with different interpretations of what was agreed to in Article 10 Health Benefits and how the language should be applied.
10. The Hearing Officer is being asked to interpret the MOU to reflect the intent of the parties from the language reduced to writing, bargaining history, the investigation/conclusions reached by the General Manager and testimony presented during the hearing.
11. The effected employees claim that the parties reached an understanding during the 2004 MOU negotiation and the two clauses in Article 10 Health Benefits are directly linked as it related to an employee who chooses to opt out of the benefits plan.
12. The General Manager denied the grievance because there was no written evidence or basis to logically interpret Article 10 in favor of the effected employees.

CONCLUSIONS TO GRIEVANCE OF EFFECTED EMPLOYEES

Contract language cannot be tailored to fit precisely the variant meanings parties to an MOU may have in mind. When language is used that is vague or general in nature and yet provides the flexibility to include those meanings which future experiences necessitates being filled in. An ambiguity in contract language usually means the parties have failed to express their intent with sufficient clarity. This ambiguity may mean that there never was any meeting of the minds.

The resulting issue in this matter is whether or not the employees who opt out of the Health Benefits in Article 10 will be entitled to receive the increase benefits in the form of salary or additional compensation. LIUNA argues, "opt out" employees will receive no benefit from the negotiated settlement and to be treated equitably, they should receive the benefit of the \$120 monetary adjustment. This is similar to the benefit given to members of the management unit.

An arbitrator is often required and expected to give meaning to contract provisions which are unclear, in situations which were not specifically foreseen by the negotiators. I am seeking to interpret the MOU to reflect the intent of the parties. This intent is determined from the express language of the MOU, statements made at the hearing, the bargaining at the table and how it has been applied with other employees within the District.

Therefore; I make the following recommendation to settle this matter:

1. The employees should be granted the \$120 as a supplement to the salary schedule and should not change or modify their individual classification or salary schedule.
2. The \$120 is not subject to PERS deductions.
3. The money is not subject to any computation of overtime or other forms of premium pay.
4. The amount payable to the employees shall be effective back to the date the other Unit employees had their health benefits pay increased.
5. The benefit of the \$120/\$130 will terminate at the end of the contract and shall be a subject of negotiations to determine how the opt out will be handled in the successor MOU.
6. This benefit should be applied in a manner consistent with the approach taken with the Management Unit.

Respectfully submitted,

/s/

Peter A. Lujan
Hearing Officer
CSMCS