



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by Wmm Date 6/13/08
General Manager

DATE: June 12, 2008
TO: Board of Directors
FROM: Administrative Services Manager
SUBJECT: Amendment to Memorandum of Understanding with Service Employees International Union (SEIU) to Implement Cost-of-Living Adjustment and Modifications to the Discipline Policy.

RECOMMENDATION: Approve amendment to Memorandum of Understanding with SEIU to provide a cost-of-living adjustment of 2.9% effective July 1, 2008 and revisions to the "Disciplinary" section of the Personnel Policies for Hourly Employees.

DISCUSSION

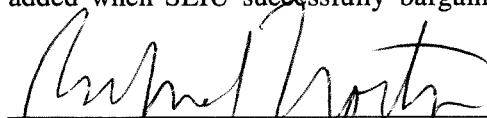
Cost of Living Adjustment. The current four-year contract with SEIU specifies that a wage adjustment, based on the San Francisco/Bay Area Consumer Price Index (CPI-U) for the 12 month period ending April 30th, will be applied July 1, 2008. Such an adjustment would be the same as proposed in the tentative agreements with the other bargaining units. The attached amendment shows what the wages would be with the 2.9% increase. The FY 2008/09 Final Budget includes \$48,600 to provide this increase for the 51 District employees who are members of SEIU.

Modifications to the "Discipline" Policy. Current procedures allow for an appeal to the Board after the General Manager affirms disciplinary action (see attached Page 1, Section VI B). The fundamental change in the proposed policy would delegate pre-appeal processes to the Assistant General Manager; place the initial appeal and evidentiary hearing with the General Manager; and establish a secondary appeal to the Board.

This policy modification was initiated by District management in order to provide review and appeal at the staff level prior to an appeal to the Board and to align District practices with other public agencies which generally include a evidentiary hearing with the general manager/city manager and the final appeal to the governing body.

In the meet and confer process, the entire District Discipline Policy was examined and discussed. As a result, several items that were not part of the core proposal were modified and are before you with a recommendation to approve. These include:

1. The specific statement regarding arranging personal financial affairs as grounds for disciplinary action (see Page 1, first paragraph) has been determined to be unnecessary, usually unenforceable, and perhaps divisive. Therefore staff is recommending the language be removed.
2. Staff also recommends the removal of the Administrative Leave section (top of Page 1) in order to move Hourly Employee policy closer to policy applicable to employees who are in OE3 units or the Management Unit which does not contain such language. This policy was added when SEIU successfully bargained for a disciplinary policy in 2002 and has not been used.


Richard Norton

**AMENDMENT NO. 3
TO
SERVICE EMPLOYEE INTERNATIONAL UNION, LOCAL 521
MEMORANDUM OF UNDERSTANDING
EFFECTIVE JULY 1, 2008**

13.00 WAGES

13.01 Effective July 1, 2008 hourly wage ranges, which include a COLA adjustment equal to 2.9%, shall be as follows:

CLASSIFICATION	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Sales Clerk II	12.74	13.38	14.05	14.75	15.49	16.26
Sales Clerk I	10.48	11.01	11.56	12.13	12.74	13.38
Recycling Attendant	10.48	11.01	11.56	12.13	12.74	13.38
Laborer II	11.68	12.27	12.88	13.53	14.20	14.91
Laborer I	9.61	10.09	10.60	11.13	11.68	12.27

DATE: _____

**SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 521, AFL-CIO-CLC**

**MONTEREY REGIONAL WASTE
MANAGEMENT DISTRICT**

Business Representative

General Manager

PERSONNEL POLICIES FOR HOURLY EMPLOYEES
July 2005 2008

VI. DISCIPLINE

The tenure of District employee shall be based on reasonable standards of personal conduct and job performance. Failure to meet such standards shall be grounds for appropriate disciplinary action commensurate with the seriousness of the offense and with due consideration to the employee's prior performance record. ~~In addition, employees shall so arrange their personal financial affairs so that credit and collection agencies will not have to make use of the offices of the District, or Manager for the purpose of making collection. Failure on the part of employees to meet their just obligations shall be grounds for adequate and appropriate disciplinary action or dismissal.~~

The following procedures shall be followed when, in the judgment of the ~~Manager~~**District**, an hourly, non-probationary employee has committed an act or omission that justifies the disciplinary action indicated. Examples of the conduct that could be grounds for such disciplinary action include incompetency, inefficiency, dishonesty, misconduct, insubordination, or failure to observe District rules and regulations.

~~A. Administrative Leave: When the District is considering suspending or terminating an hourly employee the District may, at its sole discretion, immediately place the employee on administrative leave without pay, pending disciplinary action. When an employee is placed on such administrative leave, the employee or the Union may request a meeting with the General Manager, or the Manager's designee, to discuss the circumstances surrounding placing the employee on administrative leave, said meeting to occur within two (2) working days of the receipt of such request. Within three (3) working days of placing an employee on administrative leave pending disciplinary action, the District shall either dismiss the charges and reimburse pay, or serve on the employee a Notice of Intent to Take Disciplinary Action as described in Paragraph B below.~~

BA. Notice of Intent to Take Disciplinary Action: Notice of the proposed disciplinary action shall be served on and signed by the employee and **the Assistant General Manager** and placed in the employee's personnel file. Such Notice of Intent to Take Disciplinary Action shall be served upon the employee personally, whenever possible, and shall include:

1. A statement of the nature of the disciplinary action.
2. A statement of the charges upon which the disciplinary action is proposed, and copies of the material on which it is based.
3. A statement advising the employee of his or her Skelly rights to respond to the charges either orally in a predisciplinary (Skelly) hearing, or in writing; such response must be made within fourteen (14) days after receipt of the Notice of Intent to Take Disciplinary Action.

CB. Skelly Hearings: Each hourly, non-probationary employee has a right to a predisciplinary hearing concerning a proposed termination, demotion, reduction in pay, or suspension. If the employee chooses to exercise his or her Skelly rights, said hearing shall occur within fourteen (14) calendar days of a response to the Notice of Intent to Take Disciplinary Action, and shall be heard by **the Assistant General Manager and District Counsel**, if necessary. The employee **and the District** shall have the right to be represented by counsel at any such hearing. Exercise of Skelly rights shall not preclude the employee from exercising his or her right of appeal. **If the employee does not respond or upon conclusion of the predisciplinary hearing, the Assistant General Manager shall, within fourteen (14) calendar days, by written notice to the employee and the supervisor, affirm, reduce or abandon the proposed disciplinary action. If the decision is to abandon all action, the notice of intended disciplinary action shall be removed from all personnel files.**

DC. Notice of Disciplinary Action: If the ~~District~~**Assistant General Manager** determines that an employee shall be demoted, suspended, discharged, or have a reduction in pay, the ~~District~~**Assistant General Manager** shall issue a Notice of Disciplinary Action which shall contain the effective date of the action, full and complete written reasons for such disciplinary action, and any supporting documents or evidence. If the Union represented the employee in the matter, or if the employee specifically directs, the Union shall be provided a copy of the Notice.

D. Appeal to General Manager. A regular employee who has been discharged, demoted, reduced in salary, or suspended without pay may appeal the Assistant General Manager's decision in writing to the General Manager

within fourteen (14) seven-(7) calendar days of receipt of the Notice of Disciplinary Action. Within fourteen (14) calendar days of receipt of an appeal, the General Manager shall schedule a hearing. The employee, at the individual's expense, the Assistant General Manager and the General Manager may be represented by counsel and may call witnesses. The technical rules of evidence shall not be applicable to the hearing however, hearsay alone shall not be sufficient to sustain a finding of fact. The hearing shall be tape recorded unless the employee requests and makes arrangements for a stenographic reporter. If a stenographic reporter is used, the District shall pay one-half of the fee for such reporter. Any transcripts requested shall be paid for by the party requesting the transcript. Within fourteen (14) calendar days of that hearing, the General Manager shall deliver a written decision to the employee.

E. Procedures for Appeal of Disciplinary Action to MRWMD Board of Directors: Any non-probationary **regular employee who has been discharged, demoted, reduced in salary, or suspended without pay for more than three (3) days may appeal the General Manager's decision** shall have the right to appeal any disciplinary action other than a reprimand or disciplinary probation to the Board of Directors, by delivering a written appeal to the General Manager within **fourteen (14) seven-(7) calendar days** after the employee's receipt of the Notice of Disciplinary Action. Within fourteen (14) calendar days of receipt of an appeal, a hearing shall be scheduled. The hearing shall be conducted by the Board or the Board Chair, in his or her discretion, may appoint a committee of less than a quorum of the Board's members to conduct such a hearing and report, in closed session, its findings and recommendations. **Appeal can be made only upon the following grounds:**

- (a) That the procedures set forth in the Personnel Policies have not been followed;**
- (b) That the action was taken solely because of discriminatory practices;**
- (c) That the action taken was not in accord with the facts;**
- (d) That the grounds for the action taken are without merit or unfounded.**

The following procedures shall apply to the appeal:

- 1. The hearing shall be in closed session, unless the appealing employee requests a public hearing, provided, however, if the hearing is to be conducted by a committee of the Board, the hearing shall be in closed session.
- 2. The employee, at the individual's expense, and the General Manager may be represented by counsel, ~~call witnesses and question the witnesses of the other party.~~
- 3. **Board review shall be based on the record of the proceeding before the General Manager, with no new testimony taken, and the final determination of the General Manager.**
- 4. **Each party may submit written argument to the Board. The written argument shall not exceed fifteen (15) 8 ½ x 11 inch typewritten pages, and shall be submitted at least seven (7) calendar days before the hearing for inclusion in Board agenda materials. If such written argument is not received within this time frame it shall be deemed waived.**
- 5. **Each party shall be allotted thirty (30) minutes for presentation of the oral argument to the Board.**
- 36. The hearing shall be tape recorded unless the employee requests and makes arrangements for a stenographic reporter. If a stenographic reporter is used, MRWMD shall pay one-half of the fee for such reporter. Any transcripts requested shall be paid for by the party requesting the same.
- 4. ~~The technical rules of evidence shall not be applicable to the hearing, however, hearsay alone shall not be sufficient to sustain a finding of fact.~~
- 57. Not later than seven (7) calendar days after the completion of the hearing, each party may submit written argument to the Board or the committee that conducted the hearing. The written argument shall not exceed twenty (20) 8 ½ x 11 inch typewritten pages. If such written argument is not received within this time frame, it shall be deemed waived.
- 68. The decision of the Board of Directors shall be made within twenty-one (21) calendar days of the hearing, provided, however, if the hearing was conducted by a committee of the Board, the committee shall report to the Board, in closed session, at the first meeting of the Board scheduled after twenty-one (21) calendar days of the hearing, its findings and recommendation and the decision of the Board of Directors shall be made within fourteen (14) calendar days thereafter. The decision of the Board shall be final at that time.

79. The Board of Directors may affirm, reverse or modify the decision of the General Manager.

810. No action shall be brought in Superior Court to challenge the Board of Directors' decision more than ninety (90) days after that decision becomes final.

F. Disciplinary Actions

1. Oral Reprimand: A verbal reprimand is not made a part of the employee's permanent personnel file.
2. Written Reprimand: A written reprimand shall be recorded, signed by the employee and Manager and placed in the employee's personnel file.
3. Disciplinary Probation: An employee placed on disciplinary probation shall accrue vacation and sick leave time. However, the employee shall not accrue earned time for step advancement or promotion while on such probation. Disciplinary probation shall be not less than three (3) months nor for more than six (6) months. Persons placed on disciplinary probation may be terminated for failure to meet job requirements, including conduct that might normally be grounds for a different disciplinary action.
4. Reduction in Pay: As a result of a disciplinary action, the **General Manager** may reduce an employee's pay one or more steps. The employee shall be given a Notice of Disciplinary Action pursuant to Subsection D which shall include notification of all conditions which must be met in order to receive his or her normal salary.
5. Demotion: Such action shall be pursuant to conditions specified in a Notice of Disciplinary Action (per Subsection D hereinabove). Factors leading to demotion shall include:
 - a) An employee whose ability to perform required duties falls below acceptable standards.
 - b) For any other reasonable grounds as approved by **General Manager**.No employee shall be demoted to a classification for which he or she does not possess the minimum qualifications.
6. Suspension: Such action shall be pursuant to conditions specified in a Notice of Disciplinary Action (per Subsection D hereinabove). The maximum period of suspension shall be twenty (20) working days.
7. Discharge or Dismissal: Notice of Disciplinary Action shall be given the employee, pursuant to provisions of Subsection D. An employee who has been discharged from District service shall be paid accrued vacation and earned compensating time.