

SETTLEMENT AGREEMENT

The parties to this Agreement are the City of Portland (City) on behalf of the Bureau of Water Works (Bureau), International Union of Operating Engineers Local 701 (Union), and Jeph Greenwood and John Robson (Grievants).

Background

1. Grievant Greenwood held a position as a Carpenter and Grievant Robson held a position as a Vehicle and Equipment Mechanic.
2. The Bureau posted an Expanded Transfer opportunity for an Operating Engineer I position on December 1, 2003. The maximum rate of pay for the classification at the time it was posted was \$19.73 per hour.
3. The Grievants applied for the position as an expanded transfer opportunity under City Human Resources Administrative Rule 7.01.
4. On February 26, 2004, Grievant Greenwood was presented a written offer for the position of Operating Engineer I at a wage rate of \$22.50 per hour. He accepted this offer on the same day.
5. On February 26, 2004, Grievant Robson was presented a written offer for the position of Operating Engineer I at a wage rate of \$22.73 per hour. He accepted this offer on February 27, 2004.
6. On April 29, 2004, the Grievants were informed that a review of the recruitment had been conducted and they were not eligible to receive above the maximum rate of pay for the Operating Engineer I classification under HRAR 7.01 because the rule states an expanded transfer to a classification with a lower maximum rate of pay shall be considered a voluntary demotion for purposes of compensation and seniority accruals.
7. On May 18, 2004, Robson and Greenwood each filed a grievance claiming that the Bureau had inconsistently applied HRAR Rule 7.01 regarding expanded transfers, inconsistently applied HRAR Rule 7.03 regarding demotions, and failed to honor the agreement reflected in the written offer of February 27, 2004.
8. Tim Kading, Senior Mechanical Systems Supervisor, denied the grievances at Level One, on May 25, 2004. His response cited Article 35 of the Labor Agreement, which limits grievances and complaints to matters that might arise out of the application of the Labor Agreement. The grievances were denied because they resulted out of alleged inconsistent application and misapplication of City Human Resources Administrative Rules and not out of application of the Labor Agreement.
9. Following mutual agreement on a time extension in this matter, on July 23, 2004 the City received notification of the Level Two appeal of these two grievances.

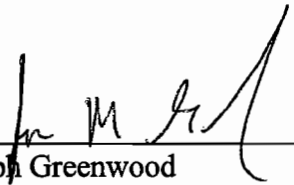
10. In early September 2004, Robson and Greenwood were nearing the completion of their probation as Operating Engineer Is. The City notified Greenwood and Robson that it intended to terminate their probation and return them to their prior classifications. Greenwood and Robson were given the option, however, to receive the redlined salary, \$22.50 and \$22.73 per hour respectively, through September 6, 2004 and remain in the Operating Engineer I classification in consideration for their agreement to be paid at the maximum rate of pay for the Operating Engineer I, \$20.12 per hour, as provided in the labor agreement. Both Robson and Greenwood agreed to remain in the Operating Engineer I classification. The City paid both Greenwood and Robson the redlined salary through September 6, 2004. Greenwood and Robson continued to pursue their grievances.
11. The parties recognize that the herein referenced "Employment Offers" communicated terms that did not reflect the "Notice of Expanded Transfer" posted on December 1, 2003 and that future expanded transfer opportunities will be operative only when offered and executed in a manner that comports with Council policy and other applicable rules. The parties further recognize that as the Local asserted a violation of Human Resources Administrative Rule 7.03, a grievance is not extant as defined in Article 35 of the Labor Agreement. Nevertheless, the parties wish to resolve the dispute and agree to the following:

Agreement

1. The Union shall withdraw the grievances referenced in No.7 above with prejudice to the issues raised.
2. The Grievants shall be compensated at the rate of pay expressed in the written "Employment Offer" referenced in Nos. 4 and 5 above from September 7, 2004 to the date each attained status as an Operating Engineer II.¹ Further, the Grievants shall be compensated at the rate of \$23.61 an hour effective the date each achieved status as an Operating Engineer II, and the rate of \$24.25 an hour as of July 1, 2005. If back pay is owed as a result of this Settlement Agreement, the Grievants shall be provided said back pay. If the total compensation owed to each grievant is \$5,000.00 or more, the Local acknowledges that this Settlement Agreement is operative only upon ratification by City Council.
3. This Agreement is the resolution of the above referenced grievances and does not establish a precedent for either party, and shall not be used to support any future grievance or proposal that may be proffered in future labor contract negotiations either by Operating Engineers Local 701, any of its members or by DCTU or any constituent of the DCTU coalition.
4. Grievants Robson and Greenwood voluntarily release and forever discharge the City and each of its Commissioners, officers, agents, employees, insurers and their successors, individually and collectively, of and from any and all claims, including any wage claims, arising from or in any way related to the circumstances covered by this Agreement.

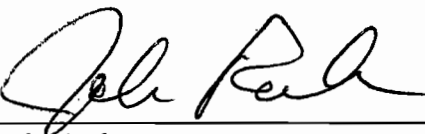
¹ Grievant Greenwood – February 14, 2005
Grievant Robson – March 9, 2005

- 5. The City will inform the arbitrator that the grievance has been settled and that the arbitration scheduled for September 22, 2005 is canceled.
- 6. The parties shall each pay one-half of the arbitrator's fee.



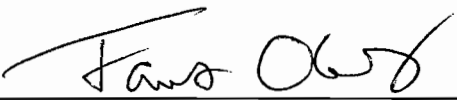
Jeph Greenwood
Grievant

Date: 10-9-05



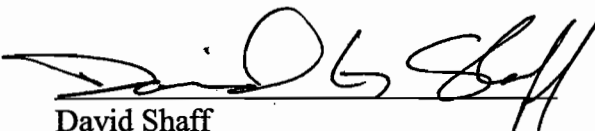
John Robson
Grievant

Date: 10-10-05



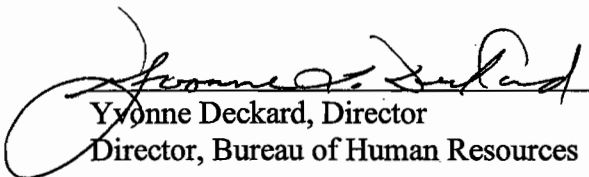
Jim O'Connor
Attorney for Local 701

Date: 10/14/05



David Shaff
Interim Director, Bureau of Water Works

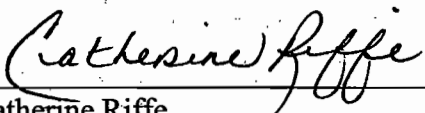
Date: 10.21.2005



Yvonne Deckard, Director
Director, Bureau of Human Resources

Date: 10/24/2005

APPROVED AS TO FORM:



Catherine Riffe
Deputy City Attorney
City Attorney's Office

Date: 10/17/05