

SETTLEMENT AGREEMENT

(Underground Grievances)

This Agreement is entered into between the City of Portland (City), on behalf of the Water Bureau (Bureau); American Federation of State, County, and Municipal Employees, Local 189 (AFSCME); Operating Engineers, Local 701 (Local 701).


BACKGROUND:

1. The City and the District Council of Trade Unions (DCTU), of which AFSCME and Local 701 are member unions, were parties to a Collective Bargaining Agreement (CBA) effective July 1, 2006 to June 30, 2010. In November 2010, the parties ratified a successor CBA effective July 1, 2010 to June 30, 2013.
2. On August 18, 2010, during DCTU successor negotiations, the City disavowed a number of practices, including the practice of "paying Schedule "A" premium 3(c) to employees who enter vaults that are non-permit required confined spaces" (Disavowal 14).
3. On December 13, 2010 the DCTU filed a grievance about the City's disavowals.
4. During 2011 and 2012 the parties met several times to discuss and resolve the grievance.
5. On November 8, 2012 the City and the DCTU member unions entered into a settlement agreement resolving all disavowals except Disavowals 7, 14, and 15. The DCTU appealed the unresolved disavowals, including Disavowal 14 about Schedule "A" premium 3(c), to arbitration.
6. On September 9, 2012 Arbitrator Richard Humphreys issued his ruling on the three unresolved disavowals, including Disavowal 14. He ruled that the DCTU did not have standing to file a grievance and that the grievance was not timely.
7. In March 2014, the City and DCTU entered into a successor CBA effective July 1, 2013 to June 30, 2017.
8. Schedule "A", Article 3(c) of both the 2010-2013 CBA and the 2013-2017 CBA provide for the payment of a premium of eighty cents (\$.80) per hour to certain employees who are "instructed to work underground or in a shored excavation."
9. On January 1, 2013 Local 701 filed a grievance (LR #2013-004) on behalf of all bargaining unit employees who work for the Water Bureau alleging that the City denied employees Schedule "A" premium 3(c) when they performed work in a non-permit required underground vault.
10. On March 21, 2013 AFSCME filed a grievance (LR #2013-013) on behalf of all bargaining unit members who work for the Water Bureau alleging that the City has not paid premium 3(c) to employees who work in an underground vault.
11. The parties wish to resolve the grievances as follows:

AGREEMENT:


1. Effective August 13, 2015 , all DCTU-represented Water Bureau employees will be paid the premium rate of \$0.80 per hour for a minimum of four (4) hours when: (1) they work in a vault; (2) the vault is under the ground; (3) the vault is a confined space as defined by Oregon OSHA; (4) the employee has completed a confined space entry form or a permit-required confined space entry form as required by Water Bureau standard operating procedure requirements (SOP); and (5) the employee has added the premium to his/her timesheet.
2. All DCTU-represented Water Bureau employees will continue to be paid the premium rate of \$0.80 per hour for a minimum of four (4) hours when they are assigned to work in a shored excavation.
3. The Water Bureau will retroactively pay Schedule "A" premium 3(c) to eligible employees for the period November 13, 2010 (thirty days prior to the original grievance filed by the DCTU on December 13, 2010) through the pay period ending August 12, 2015.
4. To be eligible for the back pay, employees must be a current employee in a DCTU-represented position as of August 12, 2015 and meet requirements 1 through 4 listed in # 1 above.
5. To determine the amount of back pay owed to each eligible employee, the Water Bureau shall compile back pay awards using confined space entry forms that were completed by employees who entered vaults under the ground that are confined spaces as defined by Oregon OSHA during the period November 13, 2010 through August 12, 2015.
6. Local 701 will withdraw the grievance referenced above (LR #2013-004) with prejudice.
7. AFSCME will withdraw the grievance referenced above (LR #2013-013) with prejudice.
8. The parties acknowledge that the commitments by the City provided by this Agreement are to compromise disputed claims and are not an admission of liability, which the City expressly denies.
9. The parties further acknowledge that this Agreement is based on the particular circumstances herein and that it does not create a precedent of any kind.
10. This Agreement is effective only upon ratification by City Council.

For the City of Portland:



Anna Kanwit,
Bureau of Human Resources Director

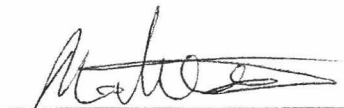
9-10-15
Date



David Shaff
Portland Water Bureau Administrator

08.28.2015
Date

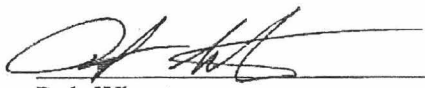
Approved as to form:



Matthew V. Farley
Senior Deputy City Attorney


9-8-15
Date

For the Unions:



Rob Wheaton
Council Representative, AFSCME Local 189

8/27/15
Date



John Scott
Stationary Coordinator, IUOE Local 701

8/27/15
Date