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In the Matter of an Arbitration Between  
**Laborers' International Union Local 483**

**and**

**City of Portland**  
(Grievance: Article 6, Outside Contracting)

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**Award & Opinion**  
**NB3022**

**Before**  
**Norman Brand, Esq.**

### **Appearances**

For Laborers' International Union Local 483  
Diamond Law  
**by Barbara J. Diamond, Esq.**

For City of Portland  
Office of the City Attorney  
**by Lory J. Kraut, Esq.**  
**Deputy City Attorney**

December 17, 2009

## Background

On May 3, 2007, Laborers' International Union, Local 483 ("Union") filed a grievance with the City of Portland ("City") on behalf of employees in the Parking Meter Technician ("PMT") classification. This was one of four simultaneously filed grievances alleging violations of Article 6 of the City's Labor Agreement ("CBA") with the District Council of Trade Unions. (J-1) When the parties were unable to resolve the grievances, the Union demanded arbitration. The parties stipulated to my hearing the case and contacted me on June 13, 2008. After scheduling hearings in March 2009, they filed cross motions on consolidation of the four separate grievances. After argument, on February 22, 2009, I issued an Interim Award & Opinion on consolidation. Prior to the hearing I ruled on further disputes about the Union's ability to interview its member witnesses, and the necessity for documents required by the subpoena *duces tecum*.

I held hearings on March 19 & 20, July 16 & 17, August 26, and September 21, 2009.<sup>1</sup> Both parties were present at the hearings, and represented by counsel. Each had a full opportunity to examine and cross-examine witnesses, present evidence, and argue its position. Neither party objected to the conduct of the hearings. A certified court reporter recorded the hearings. At the close of the hearings the parties asked to file post-hearing briefs. I received the last brief on November 20, 2009, at which time I declared the hearings closed.

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<sup>1</sup> The hearings were held at Portland City Hall, with the exception of the last, which was by telephone conference call.

## Issues

The parties stipulated the following issue:

Did the City violate Article 6.1?

If so, what is the appropriate remedy? (Day 1, p. 87)<sup>2</sup>

The parties also stipulated that if, and only if, there is a remedy, the arbitrator will retain jurisdiction over the remedy.

## Relevant Contract Language

### 6. Job Security and Outside Contracting

6.1 Any work which is performed by bargaining unit employees shall not be contracted out until the City indicates that the contracting out will result in reduced costs. This does not restrict the City from contracting out work previously contracted.

When contracting of work is being considered, the City shall withhold taking such action to provide the Union a reasonable opportunity for discussion of the matter, including alternate methods of performing the work. The City will provide all available cost comparison data to the Union(s) concerned based on uniform specifications. However, except for union contractors, available cost comparisons must include wage, health, welfare and pension costs comparable to those contained in this Agreement. The foregoing cost comparisons shall not apply to existing contracts and practices including those that may be renewed.

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<sup>2</sup> The Reporter began each day's transcript at page one. To reduce confusion, I have used the hearing day number before the page number. The hearing days are as follows:

Day 1 March 19, 2009

Day 2 March 20, 2009

Day 3 July 16, 2009

Day 4 July 17, 2009

Day 5 August 26, 2009

Day 6 September 21, 2009

## **Notification**

Although there is a stipulated issue, each party further defines the issue in its brief. In so doing, each party argues a different relationship between the first and second paragraphs of Article 6.1. The first paragraph sets forth a general restriction: “work ... performed by bargaining unit employees shall not be contracted out.” This restriction remains in effect until the City shows “that the contracting out will result in reduced costs.” The first paragraph also contains an exemption from this restriction for “contracting out work previously contracted.” The parties agree this language means the City can contract out bargaining unit work if it can show reduced costs. They also agree the City is not restricted from “contracting out work previously contracted.” Where they disagree, is on the applicability of the procedural requirements of the second paragraph of Article 6.1.

The procedural requirements begin with the general statement: “When contracting of work is being considered, the City shall withhold taking such action to provide the Union a reasonable opportunity for discussion of the matter ...” The second paragraph then generally describes the data the City will provide for cost comparisons. The last sentence of the paragraph specifically excludes “existing contracts” from the requirement to provide cost comparison data. The City contends the second sentence of the first paragraph “constitutes a complete exemption from the notice and costing requirements contained in the second paragraph of Article 6.1.” (City Brief, at 22) That is, if it decides the work it is considering contracting has previously been contracted, it has no obligation to notify the Union or provide any information. The Union contends there “are no

exceptions to this notice requirement, although cost comparison data need not be supplied in the case of contract renewals or continuation of past practice.” (Union Brief, at 22) The Union interpretation is correct because it is faithful to the language and structure of Article 6.1.

The City’s interpretation of Article 6.1 is incorrect because it renders the last sentence of the second paragraph superfluous and conflicts with the plain meaning of Article 6.1 as a whole. The first sentence of the second paragraph is inclusive: it applies whenever the City is considering contracting. It requires giving the Union a reasonable opportunity to “discuss the matter.” The paragraph goes on to detail the specific data to be used for cost comparisons. The last sentence of the paragraph eliminates any requirement to provide costing data when discussing existing contracts. If the parties meant to exclude existing contracts from both notice and costing requirements, they would not have needed the last sentence – whose sole purpose is to eliminate the requirement to provide cost comparisons for existing contracts. Because the parties included this limitation, it is clear they intended Article 6.1 to require the City to notify the Union whenever contracting bargaining unit work is “being considered.” If it asserts the work has been previously contracted, the parties can discuss that assertion without any requirement the City provide cost comparisons. If not, the City must provide cost comparisons for the discussions.

The plain meaning of Article 6.1 is that the City must provide notice to the Union whenever “contracting out of work is being considered.” If it were not, the article would have the anomalous effect of allowing the City’s unilateral determination that work was “previously contracted” to eliminate the Union’s

bargained for procedural rights contained in the second paragraph of Article 6.1. Indeed, that is what occurred here.<sup>3</sup>

On October 18, 2006, Union Field Rep Michael Dehner, having heard there was a contract affecting PMTs, made an information request for RFPs. (U-11) The City did not provide the RFP for the pay station upgrade dated September 6, 2006 (E-10). It disingenuously claimed confusion about what the Union wanted (U-11) until November 14, 2006, when the City Council Agenda containing the Precise ParkLink<sup>4</sup> contract became public. Dehner was obliged to write an immediate response because he could not attend the Council meeting the following day. (U-12) The Council approved the contract November 15, 2006, as an emergency ordinance, taking effect immediately. (U-8) This evidence demonstrates the City not only failed to notify the Union that it was considering contracting out work, it affirmatively misled the Union. Consequently, the City deprived the Union of its opportunity to discuss “alternate methods of performing the work” before the City entered into the contracts. In so doing, the City violated Article 6.1.

The City’s subsequent actions demonstrate how its violation of Article 6.1 deprived the Union of the procedural rights contained in the second paragraph. On January 19, 2007, the City conceded it had no colorable claim that removing, transporting, and reinstalling pay stations was “work previously contracted.” It advised the President of DCTU of a “change in the original contract proposal,” so that the contract now required physical removal and reinstallation of the pay stations. (U-17) The City knew it was contracting out bargaining unit work when

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<sup>3</sup> The City unilaterally determined the work contracted out was previously contracted out. (*See* City Brief at 29)

<sup>4</sup> Precise ParkLink, the contractor for the Stelio pay station upgrade, is described more fully below.

it signed the contract on November 23, 2006.<sup>5</sup> No contract change motivated the City's letter to DCTU; it was motivated by the Union's objections to contracting out. In its letter to the DCTU, the City only concedes "removing and installing pay stations" is "work that is currently performed by bargaining unit employees..." (U-17) It does not acknowledge any obligation to demonstrate reduced costs under Article 6.1 before it can contract this work out. Nor does it offer to re-start the process and follow the requirements of Article 6.1. Instead, having contracted the work in violation of Article 6.1, it offers only to engage in impact bargaining.

The second paragraph of Article 6.1 does not permit the City to unilaterally contract out bargaining unit work and then claim it need only negotiate the impact of its decision. By requiring notice when the City is considering contracting work, Article 6.1 obliges the City to discuss its belief that work was previously contracted before it enters a contract to have the work done by outsiders. Moreover, if the work is bargaining unit work, the City cannot contract it out without demonstrating it "will result in reduced costs." The City violated Article 6.1 when it contracted out the bargaining unit work of removing and reinstalling the pay stations.

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<sup>5</sup> Mr. Groccia, the president of Precise ParkLink, testified this "change" was just "a document that we submitted to ... Ellis McCoy ... on the methodology..." (Day 2, 170:21-24)

## Work Performed by Bargaining Unit Employees

The City argues that the upgrade of the pay stations it contracted out to Precise ParkLink<sup>6</sup> is not work performed by bargaining unit employees. Consequently, in the City's view, it could not have violated Article 6.1 when it contracted the work out.<sup>7</sup>

The City of Portland class specification for the "Parking Meter Technician - 1250," revised November 2005, is the official description of the work which is performed by PMTs. (U-3) The persons responsible for the November 2005 revision included Mr. Ellis McCoy, the Parking Operations Division Manager who has overall responsibility for parking operations, including the Meter Shop where the PMTs work. The Meter Shop senior supervisor is Barbara Krieg, the senior manager is Russ Gilbert, and the Meter Shop supervisor is Steve Herboth. Ms. Krieg, Mr. Gilbert, Mr. Herboth, and human resources collaborated on the revision of the class specification for PMTs. The revision began before Mr. Herboth became supervisor, and was necessary because the PMTs work had changed from working on meters to working on pay stations. (Day 5, 74:20-21) Mr. Herboth's supervisors suggested the specifics, since they were most familiar with the job. He attempted to "wordsmith" it and HR helped him make it more concise. (Day 5, 135:16-136:16) The proposed revisions were approved up the chain of command, through Mr. McCoy. (Day 5, 77:12-17) The City officially adopted the revised class specifications as of November 2005. (U-3) The "Typical Duties/Examples of Work" section of the PMT job specification contains the following descriptions:

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<sup>6</sup> As described more fully below, Precise ParkLink did not do the work that is allegedly bargaining unit work itself.

<sup>7</sup> As will appear below, the work is both regular and episodic. Some tasks are done all the time; others only when changes are made to the pay stations. The City argues that any work the PMTs did after the date of the Precise ParkLink contract does not demonstrate bargaining unit work and must be ignored. The argument is unpersuasive, in light of the episodic nature of the PMT job.



5. Upgrades meter systems; performs on-street programming of a variety of system component functions from reprogramming single meter mechanisms for time limits and parking rates to installing and verifying complex system changes to multi-space parking meter systems; tests and verifies functionality of system programming; uses handheld data terminal to program settings on single-space meters.

8. Monitors system functional performance; identifies deficiencies and potential improvements and corrections; provides input to suppliers and management regarding modifications and enhancements to improve system performance; tests and evaluates new models and equipment and system upgrades and modifications to assess functionality with the City's on-street parking control system.

There is a rebuttable presumption that a recently adopted class specification contains an accurate description of the "work which is performed by bargaining unit employees." The City provided no credible rebuttal evidence.<sup>8</sup> Therefore, for purposes of this grievance, it must be presumed this description of the PMT job is accurate. City and PMT testimony (Day 1, 40:23-42:8), as well as a site visit to the Meter Shop, support the presumption the description is accurate.

The work the City contracted out consisted of two phases. First, the contractors "benchmarked" the pay stations that they took off the streets. The benchmarking involved 15 separate activities. (U-15) Mr. McCoy was asked about these activities:

Q. Would -- So, given your knowledge and review of the meter -- the pay station tech job classifications, are there any functions listed in 1 to 15 that would be outside the scope of their class specs?

A. You'll have to give me a minute to review 1 through 15

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<sup>8</sup> The evidence the City relies on shows the PMTs began replacing motherboards and card readers in 2003 ("True Max" upgrade), and burned EPROMS and reflashed card readers in 2005 ("Rate Change July 1, 2005"). This evidence supports the Union position that the class specification accurately describes the bargaining unit work.

again, if you don't mind.

Q. Sure.

A. No, I don't think any of these items would be outside the scope. ( Day 4, 107:12-21)

The City argues, however, PMTs “had never before benchmarked pay stations...to prepare the machines to accept an upgrade.” (City Brief, at 27) Article 6.1 preserves work “performed by bargaining unit employees,” not work performed by bargaining unit employees for a specific purpose. Whether PMTs “Check all connectors and perform oxidization removal process” (U-16, 10) for the purpose of maintaining pay stations or “benchmarking” them, the work is bargaining unit work.

In furtherance of its assertion this benchmarking was not bargaining unit work, the City accuses the Union of failing “to present any evidence that the PMT’s had access to Parkeon’s confidential manufacturer’s specifications from which to benchmark the pay stations.” (City Brief at 27) The Union was not obliged to present any such evidence. Mr. Groccia testified the FeatherLite employees did not have access to the specifications.<sup>9</sup> They simply reported the test figures to Mr. Ritacca, who was the only one with proprietary information. (Day 4, 245:1-2) The PMT’s lack of proprietary information is irrelevant to the question of whether the benchmarking was bargaining unit work.

Second, after benchmarking the pay stations, the contractors upgraded them by replacing modular parts with new parts from a kit provided by Precise ParkLink. (Day 2, 196:1-199:13) They then tested the pay station’s functionality. The testimonial, documentary, and demonstrative evidence all show the

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<sup>9</sup> Precise ParkLink sub-contracted the mechanical upgrade to FeatherLite through a process that is described below.

replacement of modular parts and testing pay stations for functionality is the daily work of PMTs. The City has no colorable argument the work it contracted is not bargaining unit work. In the absence of a colorable argument, the City attacks arguments the Union never made, about work the Union does not claim. In a variation on its “proprietary information” argument, the City asserts the PMTs were unable to initialize the SMS and therefore could not have completed the upgrade. Again, FeatherLite did not have the encryption keys required to initialize the SMS, either. Only Mr. Ritacca had them. (Day 2, 238:7-239:8) The City argument has no merit. The evidence is compelling and unequivocal: the City contracted out bargaining unit work.

## **The Contract**

Precise ParkLink is a systems integration company, specializing in pay station revenue control systems, located in Toronto, Canada. Parkeon is the successor to Schlumberger, the manufacturer of the Stelio pay stations the City first began buying in 2002.<sup>10</sup> The City argues “Precise believed that it had to retain complete control over the hardware ... without that control, Precise would not have undertaken the contract.” (City Brief, at 16) In essence, it asserts an impossibility defense for its failure to comply with Article 6.1. But Article 6.1 does not provide an “impossibility” exception for contracts with companies that don’t want to allow City employees to do bargaining unit work. Even if such an exception were inferable from the contract language, the City’s argument is

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<sup>10</sup> Precise ParkLink replaced Pacific Cascade Corporation as Parkeon’s local support partner in 2006. (E-7)

undercut by the facts.<sup>11</sup> While Precise ParkLink said it could not warranty the work unless it could keep all of the contractors responsible for their work (Day 2, 168:11-169:2) it nevertheless contracted the bargaining unit work to an unknown entity with no employees.

Mr. Peter Groccia, the President of Precise ParkLink, testified to how the bargaining unit work claimed by the PMTs came to be done by others. He said: “And then as far as field staff, we were – we got involved with WMBE, which was you know, I don’t want to say a requirement, but it was a recommendation...” (Day 2, 143:12-16) Mr. McCoy recommended a specific minority contractor, FeatherLite, to Mr. Groccia. According to Mr. McCoy, he got the name from “the purchase director Jeff Baer.” (Day 4, 73:17-18)<sup>12</sup> FeatherLite’s experience was limited to being a subcontractor on the delivery and storage of the paper used in pay stations. FeatherLite had no employees who could upgrade pay stations. Precise ParkLink required no particular credentials for the employees FeatherLite hired. According to Mr. Groccia, “we wanted some kind of experience both in logistics and electronics ... if ... they worked in those fields then they were good candidates to be hired.” (Day 2, 186:4-21) Precise ParkLink never entrusted FeatherLite with any proprietary information, and relied on its own employee, Mr. Joe Ritacca, to ensure the work was properly done by FeatherLite employees.

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<sup>11</sup> The City also argued the upgrade to the Stelios was so complex and difficult that Precise ParkLink would not have undertaken and guaranteed the work, in conjunction with Parkeon, if it had not retained full control over the entire process. This is mostly true but almost wholly irrelevant. All of the complexity and difficulty of the project had to do with sophisticated computer programming to allow reliable instant credit card processing through the City’s payment gateway, on a new wireless system. The bargaining unit work the PMTs claim has nothing to do with this programming and, in fact, Precise ParkLink gave up full control of the bargaining unit work.

<sup>12</sup> Mr. Groccia later testified Mr. McCoy gave him a list of a couple of other MBEs, as well. (Day 4, 244:15-18)

On January 31, 2008, Mr. Groccia informed the City he was terminating the contract with FeatherLite because of financial irregularities, incapacity or unwillingness “to provide the project management as envisioned at the onset of the project,” and other reasons. (U-51) After Precise ParkLink informed the City it had terminated the FeatherLite contract, Mr. Mc Coy wrote Mr. Groccia informing him: “the City has strong evidence to support that theft of city funds occurred during times when our parking meters were in the possession of your subcontractor.” He demanded \$3401.95 in reimbursement for money allegedly stolen by FeatherLite employees. (U-53)

These facts demonstrate Precise ParkLink neither had, nor needed to retain, complete control over the hardware in order to upgrade the pay stations. Precise ParkLink entrusted the hardware to an unknown company, with no experience and no employees. It required no specific credentials for those working on the pay stations, and it entrusted them with no proprietary information. It is clear the work could have been done by PMTs,<sup>13</sup> with Mr. Ritacca retaining the proprietary information, as he did with FeatherLite. There is no credible evidence the City tried to negotiate a contract with Precise ParkLink that recognized the PMTs right to bargaining unit work under Article 6.1. Even if Article 6.1 had an impossibility exception – which it does not—the City failed to prove that legal impossibility prevented it from complying with Article 6.1.

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<sup>13</sup> Much hearing time was spent on the deficiencies in the contractor’s performance of the upgrades, damage to pay stations, and extra work created for PMTs. How well, or badly, the contractor performed is not relevant to whether the City violated the contract.

## Work Previously Contracted

The City offers a three part argument to show the Stelios work it contracted out is work previously contracted, and therefore exempt from the reduced costs requirement for contracting under Article 6.1. First, it asserts that “bargaining unit work” should not be defined as specific jobs such as those that are contained in the class specification. Instead, the City argues “the Arbitrator should define “the work” generally as “upgrade work.” (City Brief at 23) Second, it argues the “type of upgrade should not be a dispositive factor in defining the work contracted out.” (City Brief at 24) Third, it argues, the Union must prove “the City had never contracted out the work before,” and failed to do so. (City Brief at 23)

Having re-defined “bargaining unit work” as “upgrade work,” and having asserted all upgrades are the same (regardless of the work done), the City notes it contracted out upgrade work on its 225 CALE pay stations. Since all “upgrade work” is “bargaining unit work,” and since the CALE upgrade is “previously contracted” bargaining unit work, the City concludes: “standing alone” the CALE contract permitted it to “contract out the Stelio upgrade to real-time bankcard authorization.” (City Brief at 29) The City’s argument relies on the Humpty Dumpty Principle:

When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean – neither more nor less." L. Carroll, *Through the looking glass* ( Hayes Barton Press, 1872), p. 72.

If the City can make the words of Article 6.1 mean whatever it chooses for them to mean, it has “proved” the Stelios work was previously contracted. But it cannot. It fails to prove the Stelios upgrade work was previously contracted.

The City also argues it “previously contracted with Parkeon to have Pacific Cascades assemble and install fully operational machines.” (City Brief at 29) The City contracted with Parkeon to buy a new system, pay stations, to replace its single meters. After Parkeon installed those pay stations, PMTs were trained to do the maintenance, repair, and upgrade work that involves manual, rather than computer programming, skills. To make its argument, the City re-defines buying a new system as “the work,” then claims “the work” is a form of “upgrade,” and concludes the Stelio upgrade work at issue was previously contracted. This argument is based on the same principle as the last and is equally unconvincing.

Finally, the City attempts to shift the burden to the Union, asserting it must prove “the City had never contracted out the work before.” The Union has no such burden; it is not required to prove this negative. Article 6.1 contains a general rule forbidding contracting out of bargaining unit work except for reduced costs. It has an exemption from that rule for work that was previously contracted. The Union must only prove the work is bargaining unit work. The burden is on the City to show the work was previously contracted, if it wishes to take advantage of the exception. The City failed to show the work it contracted out was previously contracted and therefore covered by the exception.

## **Remedy**

The Union argues for a remedy that “effectuates the parties’ intention in their subcontracting provision.” (Union Brief at 37) Their intention was to preserve bargaining unit work, with certain exceptions. The Union asserts the PMTs suffered a compensable loss of work when the City violated the contract. A

reasonable measure of their loss is the amount of overtime the PMTs would have worked, if they had not been denied overtime by the City's contract violation. Paying them for this lost time is necessary to make them whole for the contract violation. In addition, the Union is entitled to declaratory relief and a cease-and-desist order.

The City agrees the general rule in arbitration is that damages should be limited to what is required to make employees whole. It asserts the Union has failed to identify a precise remedy or present any evidence PMTs suffered actual injuries. It argues PMTs were so busy they could not have done any more work.<sup>14</sup> Moreover, the City argues, it is "ludicrous" to contend the PMTs had "ample work" during the upgrade only because the City decided not to fill an existing vacancy in the PMT classification. In short, in the City's view, the Union failed to establish the PMTs suffered any compensable injury.<sup>15</sup> Consequently, "the only viable remedy may be a cease and desist order."

Three arbitral principles provide useful guidance when determining the remedy for violating a subcontracting clause. First, the type of promise embodied in the subcontracting clause determines the range of remedies. Hill & Sinicropi *Remedies in Arbitration*, (BNA, 1981) at 110. Article 6.1 contains a complete prohibition on subcontracting work, unless the City demonstrates reduced costs, by a certain standard. This language provides strong job protection, especially when contrasted with language that only requires discussion, notification, or reasonable efforts to avoid subcontracting. Article 6.1 is an unequivocal promise

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<sup>14</sup> The Union claims PMTs were kept extra busy by the need to repair damage to pay stations caused by the contractor's employees doing shoddy work.

<sup>15</sup> Although the Union did not request specific performance – providing the actual cost data – the City argues vigorously against requiring it to supply that data. In the absence of a request for specific performance, it is unnecessary to comment on the City's argument.



of bargaining unit work to bargaining unit members, except under specifically defined circumstances. The remedy must reflect the strength of this promise.

Second, where work is promised to bargaining unit members, the employer may be required to pay for overtime that would have been available but for the contract violation. *Buhr Machine Tool Corp.*, 61 LA 333 (Sembower, 1973) The testimony is that PMTs worked overtime during the 2005 upgrade.

A. We all worked four 10s, and so whoever works a Wednesday through Saturday shift is offered Monday and Tuesday to come in; and whoever works a Monday through Thursday is offered to come in on Friday for these operations.

Q. So, like, ten extra hours a week?

A. At least 10 and some do 20, depending on the shifts you work. (Day 2, 22:17-24)

The witness further testified that some PMTs worked more overtime than her, some less. From this testimony, it is clear PMTs lost substantial opportunities to work overtime when the City contracted out this bargaining unit work. The fact that they lost overtime is not speculative. During the previous upgrade—when the City did not contract the work –PMTs worked overtime to accomplish the upgrade.

Third, in devising a “make whole” remedy <sup>16</sup>arbitrators use a variety of formulas to attempt to determine what the employee would have earned, but for the improper employer action. Hill & Sinicropi *Remedies in Arbitration*, (BNA, 1981) pp. 65-68 Where, as here, the loss of overtime is not speculative, one must make a reasonable estimate of how much overtime was lost. The contractor’s employees worked approximately 18 months on the mechanical upgrade. (Day 2, 184:21 - 185:1) One measure of lost overtime might be those hours. (3 man years

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<sup>16</sup> Usually for improperly discharged employees.

of 2080 hours=6240 hours) The testimony, however, is that the contractors were untrained, required heavy and continuing supervision, and remained far less competent than the PMTs. It is unlikely the PMTs, with their higher level of skills and training, would have required three man years to complete the job. In addition, there are limits to the amount of overtime the PMTs would be likely to take.

Alternatively, one could look at the overtime PMTs worked during the previous upgrade. The testimony is that they worked one or two additional ten hour days a week. Some worked more, some less. There were undoubtedly weeks when a PMT did no overtime because of vacation, illness, or other leave. Overall, a conservative estimate is that each PMT would have worked one day of overtime a week.<sup>17</sup> During the 18 months the contractors worked, each PMT would have lost 78 weeks of overtime opportunities, for a total of 780 hours. Since there are 6 PMTs, the individual losses aggregate to 4680 hours of work. That is about 75% of the time it took the original contractors to do most of the work. In order to make them whole, the City must pay each PMT 780 hours of overtime at the highest overtime rate the employee was entitled to during the 18 months after Precise ParkLink began the mechanical upgrade of the Stelio pay stations.

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<sup>17</sup> The figure is conservative as it does not count the two Precise ParkLink employees who replaced the FeatherLite employees after Precise ParkLink terminated its contract with FeatherLite. They worked about six months. (Day 2, 213:12-214:3)

By reason of the foregoing, I make the following:

## **AWARD**

**1. The City violated Article 6.1 by:**

- a) Failing to notify the Union it was considering contracting of work;**
- b) Failing to provide the Union with cost comparison data;**
- c) Failing to withhold action so the Union had a reasonable opportunity for discussion of the matter.**

**2. The City violated Article 6.1 by contracting out bargaining unit work without any indication it would result in reduced cost.**

**3. The City violated Article 6.1 by contracting out bargaining unit work that had not been previously contracted.**

**4. The City will cease and desist from:**

- a) Failing to notify the Union when it is considering contracting any work;**
- b) Failing to provide the Union with required cost comparison data for bargaining unit work it is considering contracting;**
- c) Failing to withhold action so the Union has a reasonable opportunity for discussion when it considers contracting any work.**

**4. The City must make each PMT whole for the overtime opportunities he or she lost when the City contracted out bargaining unit work in violation of Article 6.1.**

**5. The City will pay each PMT for 780 hours at the highest overtime rate that PMT was entitled to during the 18 month period that began when FeatherLite employees first worked on the Stelio upgrade. Required employment taxes and deductions will be withheld from the payment.**

**6. In accordance with the stipulation of the parties, I retain jurisdiction over the implementation of this remedy.**

**San Francisco, CA**

A handwritten signature in cursive script that reads "Norman Brand".

**December 17, 2009**

**Norman Brand**