

Partial Agreement and Partial Dissent by Member Schiavo

The Building Trades Council which I refer to as the Union appreciates the effort that the Mediator went through to try to understand the parties' positions and to reach a fair resolution. In part, I agree and, in part, I disagree.

To reiterate our position, the agreement which we reached required that the parties find the "jurisdictions with equally comparable scope[s]." This was the contractual agreement between the parties and was reached after extensive negotiations. This must guide the Mediator. Throughout this proceeding the County has ignored and repudiated this agreement.

I continue to believe that our matrix, Exhibit 2A, accomplishes the contractual agreement between the County and the Union. Nonetheless, I am prepared to concur with the Mediator's recommendation with respect to the Electricians and the Carpenters. I agree because he has reached a result which finds jurisdictions which substantially comply with the parties' agreement.

With respect, however, to the Painters and the Plumbers, I disagree.

The Mediator has, misconstrued Exhibits 1A and 2A submitted by the Union. Exhibit 1A was a document that was initially prepared by the Union by comparing the job duties of the four crafts in the County of Sacramento. What the Union did was evaluate both the written job descriptions and the unwritten job duties of the four crafts. The Union carefully evaluated each craft and determined that the County's descriptions were sometimes inadequate because the work has been transformed so that the four crafts perform additional or different duties throughout the County. The Union included those unwritten duties after careful evaluation. The Union then prepared Exhibit 1A which was a matrix in which the Union compared what had been determined were the duties, with the written duties in other jurisdictions throughout California. To avoid the problems of determining the unwritten duties in the other jurisdictions, the Union did not evaluate any potential unwritten or undescribed duties in the other jurisdictions. Exhibit 1A, then, was a compilation scoring a comparison of the duties performed by the four crafts in Sacramento County (written and unwritten), along with the written job descriptions in the other jurisdictions.

When the Union submitted this to the County, the County vigorously objected saying it was much too subjective to consider what the Union thought were the accurate job duties of the four crafts in Sacramento County. The Union then evaluated the County's position and determined that it would be more straightforward and easier simply to compare written job descriptions. The Union then modified the matrix and prepared Exhibit 2A.

Exhibit 2A is a strict comparison of the written job descriptions in the County of Sacramento with written job descriptions in the other jurisdictions. The Union then scored them appropriately. When this was presented to the County, the County did not object to matrix 2A, at least on the prior basis because the Union had accomplished what the County had asked the Union to do by eliminating comparisons based upon what the Union thought were an accurate description of the job duties but which we not contained in the written job descriptions.

All of this was presented to the Mediator at the hearing. The Mediator took the submissions of our advocates and reached a proposed resolution. As noted, I have concurred with respect to the proposed resolution to the Electricians and the Carpenters because I think it largely achieves this purpose.

The Mediator, however, has substantially misunderstood the difference between Exhibits 1A and 2A with respect to the Painter and the Plumber. He has done so in part because of the misleading position of the County.

The Mediator has recommended including Fresno County. I object. What the Mediator has done is thought that Fresno County rates are 12 for the Plumbers and 2 for the Painters. The problem is, and this is why I dissent, that is he is relying on Exhibit 1A and not Exhibit 2A.

On Exhibit 2A comparing again, as requested by the County, the actual job descriptions Fresno County Plumber is reduced to an 8 for the Plumbers. When we look at Exhibit 2A, however, there are other jurisdictions that have higher ratings than Fresno County.

As to the Plumbers, the Fresno County job description is simply a maintenance plumber. This is a basic plumber who only does maintenance work. The County's job description (let alone the actual duties) is much more complicated and that is why the Fresno County rating is lower on Exhibit 2A. The fact is that Los Angeles County rated a 10 and Orange County rated a 10 on Exhibit 2A, considerably higher than Fresno County. Either one of those jurisdictions should have been selected.

As to the Painters, on Exhibit 2A, the painters in Fresno County are also just maintenance painters. As a result, they rated very low on Exhibit 2A at a 2. The Mediator should have instead chosen the City of Los Angeles which rated an 8 on Exhibit 2A, much in excess of Fresno County which was very low at 2.

For these reasons, I dissent because our Matrix 2A would lead to a considerably different result in the terms of choice of jurisdiction with an equally comparable scope.

I also dissent because what the County did was simply pick and choose by looking at the wage rates that would be achieved by selecting Fresno County. I recognize that the wage rates are irrelevant to the contractual language. As noted, however, the County has ignored the contractual language. The County's position, however, was based upon its analysis of the wage rates and the County suggested Fresno County because it knew that this would reduce the wage rates which ultimately would be the basis of negotiations for the Union and the County. The Mediator has fallen into this trap by ignoring the County's deliberate manipulation of the selection process to create a result which is unfair and violates the contractual language upon which the Mediator was called upon to base his decision.

I dissent and believe that as to the Plumber the Mediator should use Los Angeles County (alternatively Orange County). As to the Painter, he should adopt Los Angeles City.

I recommend Los Angeles County for the Plumber because Los Angeles County rates a 10, while Fresno maintenance plumber rated only an 8. As to the Painter, I recommend Los Angeles City because it rated an 8 out of a possible 12, while Fresno County rated only a 2.

I have also reviewed the dissent submitted by Ms. Whitman. It is an unnecessary and unprofessional attack upon the Mediator, the Union and the entire process including the governing contract language.

I'd like to take the time in this dissent to address Ms. Whitman's position because it is very unprofessional. Ms. Whitman attempts to discredit the Union and the method by which we established our matrices. As noted above, the Union did modify Matrix 1A and submitted Matrix 2A based upon the County's objections. However, Ms. Whitman is asserting that as workers and individuals, we are untrained and unable to assemble and create any meaningful document which complies with the contractual language of selecting "jurisdictions with an equally comparable scope." The fact is that we spent hundreds and hundreds of hours creating Matrix 1A and hundreds of hours again creating Matrix 2A. Thus was done thoroughly and carefully. The County has not offered one instance where the Union incorrectly scored the job descriptions of the County or of the other jurisdictions.

Rather, the County has argued, as Ms. Whitman has stated, that the document was too vague and too much for them to review. This is hardly an excuse for complying with the contract. The fact is that a review of our Matrix 2A would have been very simple. The County simply could have checked perhaps the 15 or 20 top jurisdictions in order to determine whether the Union had accurately scored those jurisdictions. The fact is the Union went far and beyond what was necessary by checking virtually all of the jurisdictions. The County could have ignored most of the jurisdictions that scored low and the above method would have reflected the fact that the Union did, in fact, a thorough and competent job.

The County stated that the data that was supplied was just too cumbersome for the County to analyze. All of the data that was submitted by the Union can easily be imported to a regular database and used in conventional ways had the county expert chosen that way. It also is a simple process to sort and select information from the "flat file" and analyze. This is a familiar data base tool probably used by the County in all kinds of applications. In effect the Unions proposal gives the County an effective tool as a template for addressing similar situations that may arise within the County should they accept the change from old ways to new technology.

There is never too much information. The lack of information will lead us to an uninformed evaluation or decision.

The County made a point as to their use of trained personnel to do the work on the market survey but those "trained" personnel were unable to digest the information that was handed to them and make recommendations based on the provided data or to in any way to empirically justify the method in which the County came to its conclusions. The fact that Ms. Stuckert had enough experience and she could have done the exact evaluation we did. She did not.

The fact is that the County has throughout rejected the procedure agreed to by the parties. The County, through Ms. Whitman, has continued to insist that the only jurisdictions that could be considered were those that were part of the County Full Market Survey. The County has refused to veer or deviate from that survey. That is contrary to the language of the Agreement.

Ms. Whitman's attack on our method is more personal than based on an analysis of the work we did, as well as the requirement of the contract.

We believe ultimately Ms. Stuckert agreed with our position that we had located jurisdictions that were equally comparable. She simply was adhering to the County's position that that was irrelevant because the County was entitled to stick with its own jurisdictions listed in its Full Market Survey.


The Council submitted a full and thorough brief to the Mediator, outlining all of these positions. I ask that that be made part of the record and the Mediator re-read our brief.

In my view, the County's refusal to accept the contractual language and to attempt to locate "jurisdictions with an equally comparable scope" will lead this matter to go further. This will either go before an Arbitrator, PERB or some other jurisdiction.

In summary, I ask that the Mediator change his decision and incorporate Los Angeles County for the Plumbers (or Orange County) and Los Angeles City for the Painters. This is consistent with the contract and with a proper interpretation of Matrix 2A.

The Mediator should also issue a decision specifically rejecting the County's unfounded attacks. The Mediator should also issue a decision making it clear that the County has clearly ignored the contractual language and has made no effort to find "jurisdictions with an equally comparable scope." I believe the County has been dishonest and deceitful. It has manipulated the process and the agreement

Dated: August 25, 2017



Todd Schiavo

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