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City Manager's Office

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: March 5, 2014

Approved 

Date 3/6/14

**SUBJECT: LSG SKY CHEFS INC. /UNITE HERE INTERNATIONAL UNION
ARBITRATION RULING REGARDING APPLICATION OF MINIMUM
WAGE ORDINANCE TO SKY CHEFS EMPLOYEES WORKING AT
THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
(GRIEVANCE NO. 12-115)**

INFORMATION

The purpose of this memorandum is to inform you of the arbitration ruling between LSG Sky Chefs Inc. (Sky Chefs) and UNITE HERE International Union (UNITE HERE) and the applicability of the City's Minimum Wage Ordinance.

BACKGROUND AND ANALYSIS

The Office of Equality Assurance (OEA) on July 11, 2013, issued a Notice of Violation to Sky Chefs for failing to pay 92 workers \$10.00 per hour. The underpayment amount was \$28,099.31 for the period of March 11, 2013 through May 9, 2013. Sky Chefs contested the Notice of Violation and argued their Master National Agreement (Agreement) with UNITE HERE contained a waiver clause that exempted Sky Chefs from the Minimum Wage Ordinance. OEA rejected Sky Chefs' assertion because their collective bargaining agreement with UNITE HERE only waived application of local living wage requirements and not local minimum wage laws.

In October 2013, through the City's due process, Sky Chefs requested the City to toll any enforcement action against them to allow Sky Chefs time to insert the express reference to the Minimum Wage Ordinance in the San José Local Wage Supplement thus obviating enforcement concerns. The City agreed and the City entered into a Tolling Agreement with Sky Chefs through mid-February 2014. In consideration of this action, Sky Chefs agreed to pay its San José workers \$9.00 per hour beginning January 1, 2014.

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Contentions of the Parties

UNITE HERE submitted a grievance on behalf of all affected San José Sky Chefs employees to protest Sky Chefs' failure to abide by the Minimum Wage Ordinance and increase the wages of all represented employees to the wage provided in the Ordinance.

UNITE HERE contended that the Ordinance was not waived by their Master National Agreement (Agreement) with Sky Chefs because the Ordinance was passed after the Agreement was negotiated and signed. UNITE HERE further contended that any waiver language in the Agreement was only intended to waive the San José Airport Living Wage Ordinance and not the city-wide Minimum Wage Ordinance; i.e., the Minimum Wage Ordinance is not a Living Wage Ordinance for purposes of the Agreement's waiver provisions.

Sky Chefs argued that during their 2012 negotiations with UNITE HERE, the Parties intended to negotiate and did negotiate a broad waiver provision that applied to present and any future local ordinances that purported to impose wage and other benefit provisions that might exceed the terms specifically negotiated in the Agreement and/or any Local Wage Supplement. Sky Chefs further argued that a living wage ordinance sets a minimum wage rate just as surely as a minimum wage ordinance does.

Arbitrator Ruling and Discussion

On February 9, 2014, Mr. David Vaughn, Arbitrator and Sole Member, System Board of Adjustment, issued his ruling. Mr. Vaughn ruled that Sky Chefs and UNITE HERE Agreement "clearly and unambiguously waives the San José Minimum Wage Ordinance, retroactive to the first day it went into effect."

In reaching his decision, Mr. Vaughn cited the contract language in the Agreement:

Effective April 1, 2012, the Master National Agreement expressly waives and deems inapplicable Living Wage Ordinances, both prospectively and retroactively.

Based on this language, Mr. Vaughn concluded "the clear expression of the Parties in the Agreement is to waive and make inapplicable all Living Wage Ordinances, both those already enacted and those which might be enacted later." He further stated "the San José Minimum Wage Ordinance is not referred to in the Agreement or Local Wage Supplement by its specific name. However, it is generally accepted that so-called "living wage" laws seek to achieve living wages for those covered by the law, primarily through the method of raising the minimum wage. Thus, the clear and unambiguous waiver included in the negotiated Agreement and Local Wage Supplements is not negated by the Parties' identification of the Ordinance to raise the minimum wage as a "Living Wage" law." Therefore the review of the "clear and unambiguous language of the negotiated Agreement requires a conclusion that the Parties stated and intended to waive application of the San José Ordinance."

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Consistent with the Tolling Agreement between Sky Chefs and the City, Mr. Vaughn further ruled that:

1. Sky Chefs shall continue to pay no less than \$9.00 per hour to employees who are subject to the San José Local Wage Supplement;
2. Sky Chefs shall make a one-time payment of two hundred (\$200.00) to each employee who is subject to the San José Local Wage Supplement as of the date of the Award and who is receiving additional compensation as a result of the Tolling Agreement; and
3. Sky Chefs and UNITE HERE shall amend the San José Local Wage Supplement to indicate that the San José Minimum Wage Ordinance, by formal legal name, and each of its provisions are expressly waived and are not applicable to the employees covered by the San José Local Wage Supplement.

Sky Chefs has informed the City that the arbitrator's decision is final and binding and that there are no appeal rights. OEA has informed the complainants of the ruling and the investigation has been closed.

COORDINATION

This memorandum has been coordinated with the Airport Department and the City Attorney's Office.

/s/

DAVID SYKES
Director of Public Works

For questions, please contact Nina Grayson, Division Manager, at 408-535-8455.