

STATE OF MINNESOTA
PUBLIC EMPLOYMENT LABOR RELATIONS ACT
INTEREST ARBITRATION

CITY OF BEMIDJI,

EMPLOYER,

AND
ARBITRATION

INTEREST

LAW ENFORCEMENT LABOR SERVICES, INC.
AWARD

BMS Case No. 07-PN-0285
ARBITRATOR'S

UNION.

ARBITRATOR:

Rolland C. Toenges

DATE & LOCATION OF HEARING:

February 6, 2008
Bemidji, Minnesota

RECEIPT OF POST HEARING BRIEFS:

February 20, 2008

DATE OF AWARD:

February 28, 2008

ADVOCATES

FOR THE EMPLOYER:

Scott Lepak, Attorney
Barna, Guzy & Steffen, Ltd.

FOR THE UNION:

Douglas Biehn, Bus. Agent
Law Enforcement Labor
Services

WITNESSES

John Chattin, City Manager

ALSO PRESENT

Ken Pilscher, Bus. Agent
James Marcotte, PF Pres.

JURISDICTION

The instant matter came on for hearing pursuant to a determination by the Commissioner, Bureau of Mediation Services, that the Parties had reached an impasse in their attempt to negotiate an agreement setting forth terms and conditions of employment.

The Parties selected Rolland C. Toenges to arbitrate the disputed issues.

The instant matter is being conducted in accordance with provisions of Minnesota Public Employment Labor Relations Act, 179A.01 – 179A.30 (PELRA). Under PELRA, the employees at issue are defined as “essential employees” (licensed peace officers). Therefore, the decision of the Arbitrator on issues certified at impasse is final and binding on all parties.

The Parties were afforded full opportunity to present evidence and argument bearing on the issues in dispute. There was no request for a stenographic recording of the hearing.

The hearing was concluded upon the Arbitrator’s receipt of post hearing briefs on February 20, 2008.

BACKGROUND

Employees at issue in the instant proceeding are Police Officers, Detectives and a Community Service Officer employed by the City of Bemidji, Minnesota. These employees comprise a Certified Collective Bargaining Unit represented by Law Enforcement Labor Services. There are currently twenty-three (23) employees in the bargaining unit, made up of twenty (20) Police Officers; two (2) detectives; and one (1) Community Service Officer.

Police Sergeants comprise a second Collective Bargaining Unit, also represented by Law Enforcement Labor Services. The Police Sergeants are not at issue in the instant matter, having settled a negotiations impasse in an earlier arbitration proceeding.

The City of Bemidji is located in north central Minnesota and is the County Seat of Beltrami County. It is the largest city in Minnesota Economic Region #2, and has a population of about 13,000 people.

Bemidji has some 5,500 single family residential units of which about 50% are owner occupied. The assessed market value of real property is about 600,000.000.

Bemidji is the home of Bemidji State University and Northwestern Technical College.

The City of Bemidji and the County of Beltrami share a common Law Enforcement Center (building).

The instant matter originally involved twenty-one (21) items in dispute. However, prior to the hearing, the Parties mutually resolved items #10, 11, 18, 19, 20, and 21.

CURRENT ITEMS IN DISPUTE

1. Duration – Length of Contract: 1, 2 or 3 years – Article 19.
2. Wages – Amount of Increase, If any, 2007 – Article 15, Schedule A.
3. Wages – Amount of Increase, If any, 2008 – Article 15, Schedule A.
4. Wages – Amount of Increase, If any, 2009 – Article 15, Schedule A.
5. Insurance – Amount of City Contribution 2007 – Article 12.
6. Insurance – Amount of City Contribution 2008 – Article 12.
7. Insurance – Amount of City Contribution 2009 – Article 12.
8. Sick Leave – Whether to Eliminate Light Duty – Article 11.9
9. Discipline – Whether to Eliminate Investigation/Discipline Article 14.5.
12. Overtime – Specialty Premium Pay, Whether to Add, if so, Amount (CSO, Drug/Gang . . .) Article 8 (New).
13. Overtime – Premium Pay, Whether to Add, Amount to FTO – Article 8.
14. Overtime – Compensatory Option – Article 8.1.

15. Overtime – Premium Pay, Amount of Shift Differential 2007 – Article 8.7.
16. Overtime – Premium Pay, Amount of Shift Differential 2008 – Article 8.7.
17. Overtime – Premium Pay, Amount of Shift Differential 2009 – Article 8.7.

ISSUE #1 – LENGTH OF CONTRACT

POSITION OF THE PARTIES:

UNION: Two years – 2007 & 2008.

EMPLOYER: Three years - 2007, 2008 & 2009.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSIITON:

- The relationship between the Parties does not support a three-year duration because both [Parties] have new representatives at the bargaining table in the past year.
- A two-year agreement will encourage the Parties to return to the bargaining table sooner and attempt to craft a long-term solution to the Police Officer's pay scale.
- Agreements are best fashioned at the bargaining table and arbitrators use a three-year agreement as a last resort.
- The Parties do not need a cooling off period for they continue to negotiate amicably to craft a settlement even after filing for arbitration.
- A three-year contract would hinder the development of positive bargaining relations between the Parties.
- The Union's argument is supported by PELRA, as it is the public policy of the state to promote orderly and constructive relationships between the parties.
- A two-year contract will allow the current Union Business Agent an opportunity to develop a strong constructive relationship with members of the bargaining unit and the Employer.

- There is insufficient data to resolve the issues for 2009. Only four of seventeen comparable cities have settled for 2009 and little is known about the cost of living or state of the economy in 2009.
- The Employer has a two-year contract with the Sergeant's unit and there is a long history of concurrent contracts between these units.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- A three-year contract will promote better labor relations by providing an additional year of labor peace when bargaining is not the primary focus. Despite bargaining to impasse in November 2006, bargaining continued throughout 2007 and the Parties need a break.
- A three-year contract will be particularly applicable in the instant case. The late date of the hearing and resulting award will not provide the Parties with a great deal of labor peace. There will only be about a six-month break before the Parties will be back at bargaining again.
- A three-year contract would allow continue coordination of contracts (with one exception) and lessen the potential for whipsawing between units.
- Internal consistency strongly supports a three-year contract in that the Public Works, Liquor Store and Firefighters all have the same contract expiration date of December 31, 2009.
- The only deviation to internal consistency is a two-year contract covering Police Sergeants, which was established by an arbitrator's award.
- The arbitrator's rationale for a two-year contract for Police Sergeants is strong rationale for a three-year contract in the instant case. The limited rationale for a two-year contract in the Sergeants case does not apply in the instant case.
- The Parties now have sufficient 2009 wage data to support a determination that the Employer will retain its relative ranking in the

appropriate external comparison group and Coalition of Greater Minnesota Cities Group.

- The movement of the employees at issue in the instant proceeding from the Employer's Insurance Pool has significantly diminished the need for a two-year award based on a volatile health insurance situation.

DISCUSSION – ISSUE #1

The record shows that the Parties have been engaged a considerable period of time in attempting to reach agreement on a contract. In fact, bargaining continued well over a year after the Parties first reached impasse. If the Arbitrator awards a two-year contract, the Parties will likely be engaged in contract bargaining again (for 2009) within six months.

The record shows that contracts for all other bargaining units within the City of Bemidji (except for Police Sergeants) extend to December 31, 2009, the same ending date a three-year contract would have if awarded in the instant case. There is more information available now, on which to base a three-year contract, than was available over six months ago when the Police Sergeants award was issued.

The record shows that there is a notable history of three-year contracts between the City and the Police Officer Unit. The last three contracts ending in 2006 have been three-year contracts.

The Arbitrator finds that the Parties will be best served by a three-year contract. A three-year contract is most consistent with the internal bargaining unit pattern established within the City and will aid in budgeting for calendar year 2009. A three-year contract is also consistent with the history of negotiations between the Parties. Most importantly, a three-year contract will provide the parties with reasonable time to establish a more relaxed working relationship before engaging again in the adversarial contract bargaining process.

AWARD – ISSUE #1

The collective bargaining agreement shall be for three-years, January 1, 2007 through December 31, 2009.

ISSUES #2,3, & 4, WAGE RATES - 2007, 2008 & 2009

POSITIONS OF THE PARTIES:

UNION: A 5.5% general increase each year for 2007, 2008 & 2009.

EMPLOYER: A 3.0% general increase each year for 2007, 2008 & 2009.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- Generally, there are four factors to be considered in determining wage increases:
 1. The Employer's ability to pay.
 2. Internal equity with other employees and units.
 3. External market comparisons.
 4. Cost of living.
- The City has adequate resources to support the Union's proposal. The City is in sound fiscal health, has a growing tax base, and as of November 2007, showed a budget surplus of a quarter million dollars.
- The Union's proposal will cost \$26,658.19 over the City's in 2007; \$27,324.65 in 2008 and \$28,007.76 in 2009, amounts the City can easily afford.
- While the City's ability to pay is not, in and of itself, a sufficient basis for a change in wage rates, it is a significant element to properly be taken into account in determining the weight to be attached to other criteria.
- The City is currently in compliance with the Pay Equity Act and under the Union's position the City will continue to be in compliance.

- Two other bargaining units in the City have received increases of over 3.0%. The Police Sergeants received 3.5% for 2007 and 2008. The Firefighters received 3.25% for 2007.
- Although there has been an internal wage increase pattern for the years 2002 through 2006, one need only look back one year (2001) to recognize a break in this pattern.
- The lack of a consistent wage increase pattern weakens the City's reliance on this factor and supports the Union's reliance on the external market and other economic considerations.
- The City's argument that the Arbitrator is limited because of the arbitration award for the City's Sergeants is misplaced, as the Sergeant award is completely different with different facts.
- The external comparison group used by the City shows that Bemidji police officer pay is almost 4% below the average of this group and more than 5% below the median, yet the City's population is 11% greater than the average of the comparison group.
- A historical external wage comparison of the 13 City comparison group shows that, in the past six years, the City's population increased from 6th to 5th highest, but police officer salaries dropped from 5th to 10th place.
- Even if Cities in the comparison group, not settled, gave zero increases to their police officers and Bemidji police officers received the Union's position of 5.5%, the Bemidji police officers ranking would move to 5th place, matching its population ranking.
- If Cities in the comparison group, not settled, do so at 3.0%, Bemidji police officers ranking would move from 10th to 7th place.
- A comparison of Bemidji with all Minnesota Cities having a population of +/- 2,500 (15 total) shows that Bemidji police officers are last in salary, being more than 7% below the average and 8% below the median.
- In 2006, Sheriff's deputies in Beltrami County received a wage increase of 7% greater than Bemidji police officers. Licensing requirements are the

same for both groups and both work out of the same Law Enforcement Center building and do essentially the same law enforcement functions.

- Many Arbitrators have held the comparison between county and city law enforcement officers is highly appropriate, if not the most important factor, when considering external market factors.
- The situation with Bemidji and Beltrami County is analogous to Rochester and Olmsted County where both share a common law enforcement center facility. In both situations, the City and County have a large common population resulting in similar levels of crime and an overlapping tax base, which is the reason Rochester and Olmsted have been compared in multiple arbitration awards.
- Salaries paid Beltrami Sheriff's Deputies should also be a factor in determining an appropriate salary rate for Bemidji police officers.
- Contrary to the Employer's assertion at the hearing that only one police officer voluntarily resigned to take a law enforcement position elsewhere, the Union believes 10 police officers have left employment with Bemidji in the last 10 years.
- In addition to the 9 police officers that left employment with Bemidji voluntarily, six have interviewed or are in the hiring process with other Minnesota Law Enforcement Agencies. These officers who have left Bemidji voluntarily and are seeking employment elsewhere comprise 65% of the bargaining unit.
- The Union has presented compelling reasons for its wage increase position, based on the external market. There has been a dramatic downward trend in the officers wages compared to other law enforcement agencies and there is a retention issue associated with the low wages paid Bemidji officers.
- In light of the referenced market comparisons, the Union's wage proposal would be better viewed as a 3% general increase for each year with a needed 2.5% market adjustment each year, needed to return the Bemidji officers to parity with the market.

- Also to be considered in wage adjustments is The Consumer Price Index, which has taken a dramatic upswing in the later half of 2007. All indicators point toward an inflation rate that will continue to climb. Wage increases below the rise in the Consumer Price Index are a principal reason that the Bemidji officer wages have declined in relation to the market comparables.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- There has been a historical pattern of uniformity in wage increases among the City's employees and this pattern was continued in the latest round of negotiations.
- The wage increases pattern in 2007, 2008 and 2009 for City employees is as follows:
 - Non-union employees received 3,0% for 2007 and 2008.
 - Public Works Unit agreed to the same non-union pay schedule for 2007, 2008 and 2009.¹
 - Liquor Store Unit agreed to 3.0% for 2007, 2008 and 2009.
 - Firefighters Unit agreed to 3.25% for 2007 and 3.0% for 2008 and 2009.
- The only major deviation from the City's wage increase pattern is the result of an arbitration award for the Police Sergeants:

"I recognize that adherence to an internally consistent pattern of wage increases can provide stability in an employer's relations with diverse groups of employees. Here, however, as the Union argues, wage rates in comparable cities justify a departure from that pattern. The departure from the pattern is also justified by the

¹ The Public Works actual increases in 2007, was 3.1% as a result of moving onto the non-union pay schedule. In 2008 it is 3.0% and in 2009 3.0%.

evidence showing that compensation to the Sergeants has eroded over time.”

- The historical uniformity noted by the Employer is entitled to great weight. The fact that all non-essential employee groups reached negotiated agreements in keeping with the general increase pattern furthers the relevant importance of this factor.
- Where arbitration is the lesser alternative to a negotiated settlement, the arbitrator should strongly defer to the negotiated internal wage settlement pattern.
- The slight Firefighter deviation in 2007 (.25%) is not significant, particularly since the settlement provides for a 3.0% increase in both 2008 and 2009.
- Of great importance in the Sergeants’ interest arbitration award of 3.5% is that the Arbitrator gave almost sole consideration to internal equity, so the Sergeants could regain some of a diminished pay spread between them and the Police Officers.
- For the instant Arbitrator to award Police Officers a pay increase equal or greater than awarded to the Sergeants would defeat the arbitrator’s rationale in spreading the pay differential between them. It would encourage interest arbitration in the next round of bargaining, creating a “boot strap” effect.
- The pay spread between Sergeants and Police Officers lessened in years prior to 2002 when the Police Officers received somewhat larger increases.
- The Union argues that its 5.5% wage position will not cause the City to be out of Compliance with the Pay Equity Act. While that may be true, the Arbitrator’s obligation to consider pay equity requirements does not extend to assisting male dominated groups sprint away from their existing pay level, which is already above predicted pay.
- The Police Officers are already \$6.03 per month above predicted pay. With the Union’s position for each year, the Police Officers would be \$360.89 above predicted pay. The Union’s position would diminish the

City's laudable underpayment ratio from 121.7 to 94.3. Pay equity considerations strongly dictate against the Union's position.

- Arbitrators commonly look at several factors when considering wage adjustments that differ from the settlement pattern established between the Employer and its other bargaining units and non-organized employees. These are as follows:
 1. The Employer's ability to recruit and retain employees.
 1. Equitable compensation relationships between job classes.
 2. Equitable compensation relationships between different levels of job classes and supervisory employees.
- The first factor of recruitment and retention of employees strongly favors the City's position. In the past ten years, only three Police Officers have left for reasons other than promotion. One individual separated voluntarily. One individual determined that he was not cut out for law enforcement and resigned in less than three months after hire. One individual resigned to accept a law enforcement position closer to where he grew up.
- The most recent opening for a Police Officer was in January of 2008. The City had 31 applicants and 22 of them tested for the position.
- The second factor also favors the City's position. As previously noted, the City's most recent pay equity report shows Police Officer pay is approximately six dollars above their predicted pay (\$3,732 actual vs. \$3,725.97 in predicted pay). The Police Officer pay is where it should be (or even greater than where it should be) as compared between City job classes.
- The third factor also favors the City's position. As noted in the Sergeant arbitration award, the arbitrator awarded them a greater increase to re-establish a reasonable differential between the Police Officer and Sergeant jobs. It is important to maintain this differential, which precludes awarding a pay increase equal to or greater than that awarded the Sergeants.

- Although the City recognizes external market comparisons as a factor, the City believes this factor should be given less consideration than the foregoing. The City contends that the external market does not warrant a deviation from the City's position for a 3% general increase in each year.
- Because Bemidji is a unique population center in north central Minnesota, its geographical isolation from other cities of similar size and tax base makes market comparisons difficult. The City's compensation study utilized a benchmark made up from the following cities.

• Alexandria	• Brainerd	• Cloquet
• East Grand Forks	• Fairmont	• Fergus Falls
• Hutchinson	• Marshall	• New Ulm
• Thief River Falls	• Virginia	• Worthington
- The City's wage compensation study showed that the Bemidji Police Officer pay ranked 9th out of the 13 cities (8 ahead and 4 behind). The reason Bemidji's ranks 9th is, in significant part, due to pay structure differences. Bemidji has historically started officers at a rate higher than the external market average starting rate. Additionally, Bemidji officers move up through the pay schedule more quickly and reach the top rate in 36 months. Accordingly, using top rates for comparison does not accurately reflect actual pay when cities, included in the comparison have a longer interval to reach the top rate. Five years to top is common in law enforcement agencies as is the case in the cities of Marshall, New Ulm, Virginia and Worthington. It is particularly difficult to compare cities like Fergus Falls that have a nine step to top rate system.
- External market comparisons can also be flawed because of wide variations in the value of total compensation (wages plus benefits). For example, officers in Bemidji enjoy a vacation benefit that is far superior to that offered in other jurisdictions. Bemidji's vacation benefit provides 48 hours of vacation in the first year of employment and jumps to 96 hours in the second year, to 144 hours in the sixth year and tops at 112 hours starting with the eleventh year.
- External market comparisons can be further complicated by a lack of sufficient settlements to establish a meaningful pattern. Additionally, there may be variations in terms of general percentages in each year that

may even out over time (such as entering a three-year agreement that is “front loaded” or “back loaded”) Accordingly, precise market positions cannot be accurately stated – particularly at any given period of time.

- A better approach, and one that “smoothes out” the year to year variations, involves consideration of external comparable wages in terms of relative ranking. This approach does not focus on precise deviations above or below average. Rather, it focuses on historical position within the market. This is the focus that the City used in its external wage comparables.
- Arbitrators should use market ranking only as a historical marker, rather than a mechanism to improve market position. If the Union is to restructure its market ranking, it needs to accomplish this through negotiations.
- The City’s proposed increase reveals that it will retain its relative ranking relative to top pay. In 2006, the last year the Parties reached a voluntary settlement, Bemidji ranked 9th of 12 cities in the external market utilized in the City’s pay study and 5th of 7 cities in the smaller Coalition of Greater MN Cities market study.
- In 2007 (with Marshall not reporting but Hutchison included), using the City’s proposed increase, Bemidji would still rank 9th of 12 and 5th of 7 in these markets in top pay.
- In 2008, using the City’s proposed increase, the actual settlements would rank the City at 8th of 10 using the larger market. One of the two cities not settled traditionally is above Bemidji and one is traditionally below. Absent an aberrant settlement or arbitration award, Bemidji would retain its relative ranking. The same is true in the coalition market where Bemidji would rank 4th of 6 using the City’s proposed settlement and would maintain its same 5th of 7 ranking. The likelihood of retaining this relative position is increased once the traditionally higher paying Brainerd is established (this is almost a certainty since Brainerd’s 2007 pay is already in excess of Bemidji’s 2008 rate.
- In 2009, using the City’s proposed increase, the actual settlements would rank the City at 3rd of 5 using the larger market and 3rd of 6 using the coalition market (the coalition has a settlement for Detroit lakes which is

not in the larger market comparison group). Utilizing the coalition group and projecting that Brainerd will eventually settle an agreement with a greater wage than Bemidji, Bemidji will rank 4th of 7 (an improvement due to Bemidji passing Detroit Lakes).

- The above data shows that Bemidji is well situated within the external market relative to its Police Officers, both at the starting rate and at the top rate.
- Bemidji starts its Police Officers at a rate above the market average. Accordingly, there is no market issue with the starting wage rate. Because Bemidji Police Officers can progress to the top rate in only 36 months, it should be expected that Bemidji's top rate would be below average. The Union's wage data shows that 8 of 12 cities require greater years to reach top rate.
- The relevant focus is Bemidji's historical ranking within the smaller Coalition of Greater Minnesota Cities comparison group. The data presented by both Parties agrees that Bemidji will rank 9th of 13 in the larger group in 2005, in 2006 (the Union had data from Hutchinson that the City did not have) and in 2007 (utilizing the City's proposed final position).
- The data shows that Bemidji has historically paid more at the top rate than East Grand Forks, Thief River Falls and Virginia. Utilizing the existing data for 2008 shows that Bemidji will continue to pay more than Thief River Falls and Virginia and will retain its market position in terms of relative ranking, barring a massive change in the pay rates for East Grand Forks. Accordingly, Bemidji will retain its market position in terms of relative ranking. This same relative ranking appears to be holding true for 2009 were Virginia is already established as below Bemidji.
- The market data is seven more established in 2007-2009 utilizing the Coalition grouping. Utilizing the actual data and reasonably projecting that Brainerd will eventually settle an agreement with a greater wage than Bemidji, Bemidji will rank 4th of 7 (an improvement due to it passing Detroit Lakes in 2008). This data shows that the City is well situated within its external market relative to the Police Officers at the starting rate and is maintaining its relative market position with the top rate.

- The Union's attempt to consider Beltrami County a market comparable appears to be a recent discovery, tied primarily to the 2006 increase that Beltrami County Deputies received (in excess of 13% as a result of a pay study and new pay plan), Union materials at page 175. Bemidji Police Officers did not compare themselves to Beltrami Deputies in 2005 when Bemidji Police Officers made more than Beltrami Deputies. Accordingly, no weight should be given to this recently discovered comparison.
- External market considerations do not support the primary focus on internal equity.
- Bemidji has a limited tax base. Forty five (45) percent of property in the City is tax exempt. The 3% increase proposed by the City and 2007 increases received by other employees, cost approximately \$158,000, equating to a 6.2% increase in the City tax levy. This does not include other City costs such as, capital replacement needs, fuel and the usual cost of doing business.
- In 2008, the City's fiscal situation is worse. The City's local government aid is \$259,000 less than that received in 2007. The tax levy needed to make up for this reduction is 9%. Coupled with the City's 3% wage increases in 2008, taxpayers will be hard pressed to afford this increase, particularly those on a limited or fixed income.
- The fiscal situation is exacerbated by the state's job picture that the Star Tribune on January 16, 2008, characterized as "ugly." The article's first sentence noted "Minnesota ended 2007 with its job market in a tailspin." The states unemployment rate for December 2007 jumped to 4.9%, up from 4.4%. This has placed a significant downward pressure on the ability of residents to pay for any increased cost of government.
- The City's financial picture in 2009, like that of the great majority of other political subdivisions, is even bleaker. There is no dispute that the current economic downswing has been led by a sharp downturn in the housing market. The existing value of homes has fallen. Because the City, like other local government in the state, calculates property tax on property value, this decrease will present a budget gap that may not correct itself for the foreseeable future. The cushion that cities, including Bemidji, have had because of the lag in property valuations will abruptly end in 2009.

- The evidence and argument of the Parties reveals that this is not an “ability to Pay” issue. Rather, it is a caution for the Arbitrator to review the economic impact of any award. It is revealing that, the 2008 reduction in local government aid is a 7.3% tax levy increase, or \$190,000. Dividing \$259,000 by 9.9 shows that approximately \$26,000 in additional expenses is equivalent to a 1% levy increase. Accordingly, the Union’s proposal would burden the City with something over an additional 1% levy increase in each year of the Agreement. Given the City’s tight finances, this factor favors the City’s final position.
- The Union’s argument, relative to annexation, does not diminish the financial impact. Annexation is a liability rather than a valuable short-term revenue source for Cities, because it results in the need for City services such as law enforcement, for a period of time, while there is additional revenue. Annexation of township property is at a reduced level for six years (Minn. Stat. Sec. 414.035). In addition the statute requires a city to reimburse a town to annex taxable property. Annexation, if it is to be considered at all, favors the City’s final position.
- Finally, any increase in tax capacity that the City is recently experiencing will likely be tempered by the existing economic slowdown. This consideration does not favor either Party.
- The Consumer Price Index (CPI), Midwest Urban Consumers, shows that inflation for 2007 was 2.7%. This is significantly less than the 3% wage increase the City is proposing in 2007.
- The CPI is a greater inflation measure than actually experienced by these individuals because it includes highly inflationary changes in health insurance premiums. Eighty percent of the CPI change is an approximation of the real change in purchasing power for a public employee.
- It is also important to note that fluctuations in the CPI from month to month are not an accurate measure of overall inflation – particularly in an economy with volatility in items such as energy costs. Rather, a more accurate comparison is over a period of years. Such an analysis demonstrates that these employees have fared well as compared to inflation. From 2001 through 2006, the CPI has increased 13.8% while the general increase for the employees at issue has been 16%.

- The data and arguments of the Parties support the City's final position more than the Union's position. For 2007, the annual CPI rate most approximates the City's final position regardless of which CPI measurement us used – Midwest Size Class D (Union) or Midwest Urban (City). The matter becomes even more supportive of the City's final position when the health insurance inflation factor is removed from the equation. Consideration of this issue over the past five years shows that the members of this group have fared well against the CPI, even without considering the inflation for health insurance premiums. In contrast, the Union's proposed increase does not have any connection or support based on this data.

DISCUSSION, ISSUES #2, 3 & 4

In support of their respective positions, the Parties arguments can be summarized into the following categories:

- Internal compensation relationships.
- Internal pay relationship between Police Officers and Sergeants.
- Recruitment and retention of employees.
- Compliance with the Minnesota Pay Equity Act.
- External market comparisons.
- Budget considerations.
- Cost of Living (Consumer Price Index).

INTERNAL COMPENSATION RELATIONSHIPS:

The record shows that non-union City of Bemidji employees received wage increases of 3% for 2007 and 3% in 2008. The City's expectation is that a 3% increase will also be approved for 2009.

A negotiated settlement with the Liquor Store Employee Bargaining Unit provides for 3% in 2007, 3% in 2008 and 3% in 2009.²

A negotiated settlement with the Firefighters Unit provides for 3.25% in 2007, 3% in 2008 and 3% in 2009.

A negotiated settlement with the Public Works Unit provides for 3.1%³ in 2007, 3% in 2008 and 3% in 2009.

The Police Sergeants contract, settled via arbitration, resulted in a two-year contract providing for 3.5% in 2007 and 3.5% in 2008. In part, the Arbitrator's reasoning for awarding Sergeants a higher increase, than the City's position of 3%, was that the salary spread between Police officers and Sergeants had eroded over time (about 2%), justifying the higher increase.⁴

The Police Officer Unit consisting of some 23 employees⁵ is the only Bemidji employee group where a wage increase has not been established for 2007 and 2008. There are some 100 City of Bemidji employees.⁶

Internal Pay Relationship Between Police Officers and Sergeants:

Union Exhibit, at page #163, a schedule of comparative wage increases for Police Officers and Sergeants from 1991 through 2006, shows that the accumulative increase for Police Officers and Sergeants in the past 10 years (1996-2006) has been equal. However, between 1991 and 1996 the increases for Police Officers exceed that of Sergeants by 2.78%, causing the salary spread between them to erode from 13% to under 11%. The effect of the Sergeant's Arbitration Award is to reestablished 1% of the erosion.

² City Exhibit #6.

³ Although, the general pay increase was 3% (City Exhibit #5) 3.0%, the effective increase for 2007 was 3.1%, due to adjusting the Public Works pay rates to conform with the City's uniform pay plan.

⁴ Union Exhibit at page #400.

⁵ City Exhibit #2.

⁶ City's post hearing brief at page 11.

Although the City's internal settlement pattern shows some deviation from a straight 3% pattern, and some basis for awarding Police Officers something higher than the City's position, the salary relationship between Police Officers and Sergeants mitigates against it. If the Police Officers were to be awarded something more than 3%, it would negate the 1% salary spread established by the Sergeant's Arbitration Award.

The City argues that the Arbitrator's award should represent what the Parties would have agreed to, if the dispute were to be resolved in a negotiated settlement. The City points out that it would "never agree to a situation where one group is set up to conflict with another. . . It would encourage interest arbitration in the next round of bargaining, creating a 'boot strap' effect."

Compliance with the Minnesota Pay Equity Act:

The record shows that, neither the Union's proposed increase, nor the City's, would cause the City to be out of compliance with the Minnesota Pay Equity Act, but would diminish the City's underpayment ratio from 121.7 to 94.3. The minimum requirement to be in compliance is an underpayment ratio of 80.0.⁷

External Market Comparisons:

⁷ Minnesota Pay Equity Act, Minn. Stat. Sec. 471.992, Subd. 2, Arbitration. "In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established in 471.993, together with other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study. In interest arbitration for a balanced class, the arbitrator may consider the standards established under this section and the results of, and any employee objections to, a job evaluation study, but shall also consider similar or like classifications in other political subdivisions." The arbitrator is required to assure that ". . . the compensation for positions which require comparable skill, effort, responsibility, working conditions, and other relevant work-related criteria is comparable . . ." Minn. Stat. Sec. 471.993 (2006).

A test commonly used by arbitrators, to determine if compensation is sufficiently competitive in the market, is to observe the Employer's history of recruitment and retention of employees.

The City points out that, in the last three years, only three Police Officers have left for reasons other than promotion. One left voluntarily; one was not suited for Police work and left after a short time; and one left for a law enforcement position elsewhere. The City points out that in recruiting for a vacancy in January 2008, it had 31 applicants, 22 of which tested for the position.

The Union states that it believes 10 Police Officers have left employment with the City in the last 10 years, and several more are contemplating leaving.

Under either the Union or City's turnover data, it appears that actual turnover to date has averaged about one employee per year. In a unit of 23 employees, this is an annual turnover rate of less than 5%. This rate of turnover is well within normally accepted standards and is not indicative of a non-competitive labor market position.

The City's latest recruitment experience indicates an ample supply of applicants are attracted to the position of Bemidji Police Officer, which is also indicative of an adequate compensation system.

The commonly used measure of pay competitiveness is to make a comparison of comparable positions with other similarly situated employers.

For this purpose, the Parties presented three comparison groups that employ Police Officers:

One group used for comparison by both Bemidji and the Union consists of 13 Minnesota cities, similar in population. This is the same group of cities selected by an outside consultant that conducted a classification and compensation study for the City. All of these cities have settlements for 2007; nine (9) have settlements for 2008; and five (5) have settlements for 2009. Bemidji's starting salary for Police Officer ranks #4 or #5 among this city group, depending on the year compared. Bemidji's top rate for Police Officer ranks #9 or #10, depending on the year of comparison. In

comparing 2008 and 2009, it is presumed that cities, not yet having a settlement for 2008 and 2009, will settle at 3%.

A second group of cities presented by Bemidji for comparison, referred to as the "Coalition of Greater Minnesota Cities Group," consists of seven (7) cities geographically located in the same region of Minnesota as Bemidji. All but one of these Cities has settlements for 2007 and all but two (2) have settlements for 2008 and 2009. Bemidji's starting rate ranks #1 or #2 highest" and Bemidji's top rate ranks #4 or #5, depending on the year of comparison.

A third group of 15 cities (consisting of all Minnesota non-metro cities with +/- 2500 population) presented by the Union for comparison excludes some of the 13-city group referenced above and adds others. In this survey, Bemidji ranks #7 in population and lowest in top salary. The cities excluded in this survey ranked #11 and #12 lowest in top pay and the cities added ranked #1, #2, #5, #6 and #7 highest in top pay, the effect being a lower ranking for Bemidji.

The Union presented a summary of Police Officer salary adjustments by the 13-city comparison group from 2000 through 2006. This survey shows that while there was a 10% spread between the top salary rate of the lowest paying city and the highest paying city in year 2000, the spread increased to 20% by 2006. While Bemidji's top salary rank dropped from #5 in 2000 to #10 in 2006, it is not unique. Among the 13 cities, the rank of three (3) was unchanged; the rank of seven (7) went down; and the rank of three (3) went up. The change in ranking ranged from one (1) to six (6) positions. If a conclusion can be drawn, it would seem that strict adherence to the external market pattern has become less of a controlling factor with the passage of time.

The Union presented an exhibit (Page 174) showing the effect of the Union's 5.5% proposal if the cities that have yet to settle do so at a uniform 3%. The Union's proposal would raise the rank of Bemidji's top salary rate among the 13-city comparison group to #9 in 2007 and 2008; and to #7 in 2009.

The Union presented an exhibit (page 175J) showing a comparison of Bemidji's Police Officer rates with those of Beltrami County Sheriff Deputies. The Bemidji Police Officers and the Beltrami Sheriff Deputies

both work in the same Law Enforcement Building. The exhibit shows that Bemidji's starting salary in 2005 was nearly 12% higher and Bemidji's top rate was about 2.5% higher. However, in 2006, Beltrami increased its pay rates 13.5% while Bemidji increased its 3%. The result being Bemidji's starting rate is now about 3% higher and its top rate over 7% lower. Although one would believe there must have been unusual circumstances prompting Beltrami's dramatic pay increase, no explanation was given. In 2007, Beltrami County increased its rates 3%.

The Union argues that, due to the common Law Enforcement Center shared by Bemidji Police Officers and Beltrami Sheriff Deputies, the common population served, overlapping crime and overlapping tax base, the salaries paid to Beltrami Deputies should be a factor in determining the appropriate salary rate for Bemidji Police Officers. Bemidji counters the Union's argument by pointing out that this is the first time the Union has used Beltrami salaries as a comparison, because previously Beltrami's rates have been lower.

Bemidji points out that strict comparison of salaries with external rates is flawed due to wide variations in pay and benefit structure. Bemidji has historically started Police Officers at a higher rate than the external market average. Additionally Bemidji Officers move to the top rate after 36 months and cannot be compared to an employer using the traditional five (5) year to top system. Some employers have even a longer time to reach top rate, such as Fergus Falls that has a nine (9) step system. Bemidji argues that because it uses a 36-month to top rate pay system, Bemidji's below average top rate is to be expected.

Bemidji points out that benefit structures also differ between employers and account for differences in salary level - for example, Bemidji Officers have a vacation benefit that is far superior to that offered by other employers in the comparison group.

Bemidji points out that external comparables should be used as a historical marker, rather than a mechanism to improve market position as was stated in an Anoka County arbitration award:

"The Union's argument for a larger 1999 wage increase and for augmented longevity steps rely almost entirely on bringing the County deputies' pay up to the average of the relevant comparison

cohort. Implicit in this argument is that the undersigned change the order in which comparison cohort counties are ranked in terms of pay, moving Anoka County up in the ranking. However, without specific reasons to support a restructuring of this nature, there is no justification for supporting the Union's proposal."

Bemidji argues that its proposal of a 3% increase will maintain its relative position in the external market and points to the smaller Coalition of Greater Minnesota Cities as a more relevant comparison group, which shows Bemidji ranking first or second in the starting rate and sixth or seventh in top rate.⁸

Budget Considerations:

Bemidji argues that its tax base is limited because 45% of the property value in the City of Bemidji is tax exempt. Its 3% proposal equates to a 6.2% increase in the City levy. This is without even considering the City's increased costs for items other than wages, such as capital replacement needs, fuel and the City cost of doing business.

In 2008 the City's share of Local Government Aid is \$259,000 less than the 2007 amount. The levy increase to make up this amount is 9.9%.

Although Bemidji's tax capacity increased 21% between 2006 and 2007,⁹ Bemidji's tax levy increased by 31%.¹⁰ About 66% of Bemidji's taxable property is residential.¹¹ The City argues that this places a particularly difficult burden on citizens with limited and fixed incomes.

The City argues that its financial picture in 2009 will be even more difficult due to the downturn in the real estate market, which is having the effect of devaluing the City's tax base. In the past there has been a cushion resulting from the lag in valuations to actual value. This will abruptly end in 2009.

⁸ City Exhibit #12.

⁹ Union Exhibit at page 95.

¹⁰ Union Exhibit at page 81 & 84.

¹¹ Union Exhibit at page 80.

The City points out it is not making an inability to pay argument, but raises caution that anything beyond its proposal will place significant stress on the City's financial health. Currently, 65% of the City's General Fund is allocated to personnel costs.¹²

The City counters the Union's argument relative to annexation in that it is a liability, rather than a short-term revenue source. Revenue from annexed township property is at a reduced level for six years. Further, Minn. Stat. Sec. 414.036, requires a city to reimburse a town for annexed taxable property.

Consumer Price Index:

The Union argues that the cost of living is an issue because the Consumer Price Index (CPI) has taken a dramatic upswing in the later half of 2007 and all indicators point toward an inflation rate that will continue to climb.¹³ The Union disagrees with the City's argument that its proposed increase compares favorably to the CPI and asserts that these same general increases are a principle reason the Police Officer's wages have declined in relation to the market comparables.

The City counters that the CPI (Midwest Urban Consumers) shows that inflation for 2007 was 2.7%, significantly less than the City's 3% proposal. The City further argues that the CPI measure of inflation is greater than that actually experienced by the Police Officers because, it includes highly inflationary health insurance premiums and 80% of the CPI change is an approximation of the real change in purchasing power for a public employee.

The City also points out that it is important to recognize that month-to-month fluctuations in the CPI are not an accurate measure of overall inflation, particularly in an economy with volatility in items such as the cost of energy. The City's comparison of wage increases for Police Officers with the rise in the CPI from 2001 through 2006 shows an accumulative wage rate increase of 16% and an accumulative rise in the CPI of 13.8%.

¹² Union Exhibit at pager 87.

¹³ Union Exhibit at page 224

DECISION, ISSUES #2,3 & 4:

The Arbitrator finds the City's argument for the wage increase to be consistent with its internal settlement pattern compelling and a primary factor supporting the City's position for a 3% wage increase for each year of the three-year contract.

Another primary factor supporting the City's position is the compensation relationship between the Police Officer and Sergeant classes. The salary spread established between the Police Officer rate and the Sergeant rate via arbitration precludes awarding Police Officers an increase greater than 3%. To do so would in effect ignore and overturn the finding of Arbitrator Gallagher.

Although external market comparisons show the Bemidji Police Officers salary ranking has declined over time, the Arbitrator does not find this to be a controlling factor. The evidence shows that strict adherence to an external market rate has become less of a factor influencing salary adjustments. Only a small minority of cities (3 of 13) has maintained a consistent ranking over the seven-year period shown in the study. More than one-half of the City's (7) have moved to a lower rank.

The Arbitrator concurs with the Union's point that the ideal would be for Police Officers and Sheriff Deputies working out of the same building and performing similar functions in common geographical areas to be in pay parity. However, the Arbitrator does not find sufficient evidence in the record to draw any conclusions regarding the fluctuating pay relationship between the Bemidji Officers and the Beltrami Deputies.

External market rates are not necessarily a true reflection of compensation paid. The posted market rate represents pay policy but not necessarily pay practice. Pay practice is actual pay versus what the pay plan indicates might be paid (pay policy). For example, comparing top rates can be misleading. Bemidji pays its top rate after three-years, where other employers do not pay top rate until five years or later. This can have a significant effect on career earnings. The employee that reaches top rate earlier, even if it is lower, can earn more over time than the employee reaching top rate later. Simply put, the top rate posted is irrelevant unless that is the rate actually being paid.

Also, there are a number of compensation variables not reflected in the posted market rates. Among these are such things as leave benefits, insurance contributions, etc. A true comparison would need to include the cost of the total compensation package for all employers surveyed, including actual wages paid plus the actual cost of all benefits.

Bemidji's recruitment and retention experience does not indicate a lack of competitiveness in the market. A certain amount of turnover is to be expected. The evidence does not show Bemidji's to be excessive.

Bemidji's compliance with the Minnesota Pay Equity Act should be minimally affected by a 3% adjustment applied uniformly across all classes of employees. Although the Union's proposal would not cause Bemidji to be out of compliance with the Act, it would reduce the spread between the existing underpayment ratio (121.7)¹⁴ and minimum compliance (80.0)¹⁵ by more than one-half to 94.3.¹⁶

The City of Bemidji indicates it has the ability to fund its proposed 3% increase and is not arguing that it does not have the ability to fund the Union's proposed increase. However, there is considerable evidence that the City is undergoing financial stress and predictions for the future are not favorable.

With respect to financial limitations of the City, it is noted that the Arbitrator's decision is subject to the provisions of Minn. Stat. 179A.16, Subd. 7, which in part provides:

“. . . In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations. . . .“

¹⁴ Union Exhibit at page 100 and 105.

¹⁵ Union Exhibit at page 137.

¹⁶ Union Exhibit at page 126.

The Arbitrator finds that, although Bemidji has the ability to fund either its proposal or the Union's proposal, awarding the Cities proposal will avoid an exacerbation of the financial stress being experienced by the City.

The Arbitrator finds that the Union's argument has merit regarding the significant rise in the CPI during late 2007. However, the rise in the Police Officers wage rate over the past several years has clearly out paced the rise in the CPI during this same time period.

AWARD, ISSUES #2, 3 & 4

The wage increase shall be 3% in 2007, 3 % in 2008 and 3% in 2009.

ISSUES #5, 6 & 7; INSURANCE - AMOUNT OF CITY CONTRIBUTION

POSITIONS OF THE PARTIES – 2007, 2008 & 2009:

UNION: Agrees to the Employer's original proposed contribution amount of a monthly contribution toward the cost of health and other benefits to each eligible bargaining unit member in the amount of seven hundred thirty-eight dollars (\$738), inclusive of the VEBA contribution. This amount will increase by forty dollars (\$40) in 2008 and an additional forty dollars (\$40) in 2009.¹⁷

EMPLOYER: Employer will make monthly contributions toward the cost of health and other benefits to each eligible member in the bargaining unit in the amount of seven hundred eighteen dollars (\$718), inclusive of the VEBA contribution. The Employer's contribution to be six hundred

¹⁷ This is the Union's modified position as presented at the hearing.

eighteen dollars (\$618) in 2008 and six hundred eighteen dollars (\$618) in 2009.¹⁸

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- Prior to 2008, the Police Officers were subject to the same VEBA health plan as the other City employees, with the exception of the Public Works Bargaining Unit. A VEBA is a supplement to a high deductible plan consisting of an individual account for each employee. Under this plan, the employee selects how to spend the money within certain defined parameters. Under this VEBA health plan, the City makes monthly contributions to the insurance premium and also contributes one hundred dollars (\$100) to individual accounts under a Health Reimbursement Arrangement (HRA).
- For 2007, the City's insurance pool, the Northwest Service Cooperative, increased the premiums charged to the Employer by 25% above the premiums charged in 2006.
- In response, the City proposed to "front load" the 2007 City contribution increase to account for this significant increase under the premise that the 2008 and 2009 rates would not be so steep and that the employees needed the most assistance with the premium increase in this first year (2007). The "trade off" for the employee groups was that the City increased contribution in 2008 and 2009 would be less.
- The increase of \$70 in 2007, \$40 in 2008 and \$40 in 2009 were then negotiated with the other groups at the City and imposed on the Police Sergeant group by the arbitrator in his award.
- The internal consistency argument flew apart for the City when this group [Police Officers] proposed to and then left the City insurance pool for 2008.

¹⁸ This is the City's modified position as presented at the hearing.

- While the Public Employees Insurance Pool (PEIP) plan offers single, single plus one and family coverage, all of the Police Officers, with the exception of one selected the single coverage. The one individual elected single plus one to cover a dependent. These coverage options are Advantage High, Advantage Quality and Advantage HAS. The options and rates are as follows:

	<u>Adv. High</u>	<u>Adv. Quality</u>	<u>Adv.</u>
	<u>HAS</u>		
Single	\$468.40	\$444.34	\$376.34
Employee Plus one	\$983.62	\$933.10	\$790.30

- This move results in a significant detriment to the rest of the City employees in 2008 because of the smaller risk pool and experience rating. In the event that the Police Officers had remained in the City pool in 2008, the premiums for employees in the existing City Pool would have been significantly less than the current rates:

	<u>Rate if Officers still in pool</u>	<u>Current rate without Officers</u>
Single	\$453.50	\$508.00
Family	\$1,134.00	\$1,271.00

Because the Officers moved to PEIP, the other employees at the City had to pay \$54.50 more per month for single coverage (\$654 per year) or \$137 more per month for family coverage (\$1,644 per year).

- For this reason, the City no longer proposes to make the same insurance contributions toward the Police Officers' insurance program in any year of the CBA. The seventy dollars (\$70) that the City proposed as an increase for 2007 was intentionally front-loaded to take ten dollars (\$10) from 2008 and 2009 and move it into 2007 to allow employees to offset the 25% increase in 2007. It was not intended as a windfall for individuals to enjoy in 2007 and then disappear from the pool.
- Given the Union's action of breaking up the City group, internal equity is no longer practical for this group – particularly as the group's action is destructive of the insurance positions of their fellow employees at the City. Accordingly, the City's contribution toward health insurance for

2008 and 2009 should be significantly less than it currently provides to other employees.

- The PEIP materials note:

“Each of the network health plans in the PEIP offers a single, comparable set of benefits. To promote price competition, the Program strongly encourages participating employers to pay a flat dollar amount equal to at least 50% and no more than 100% of employee premiums charged by the lowest cost plan available. A 50% minimum employer contribution is required.

Tying the employer contribution to the lowest cost health plan is a key part of the *managed competition* approach to health insurance purchasing. It ensures that employees will be price sensitive in choosing a health plan and maintains pressure on insurance carriers to keep rates competitive.”

- Accordingly, to recognize that this group has abandoned its fellow employees, the City no longer proposes to ‘front load’ its 2007 insurance contribution. Rather, it proposes to increase its 2007 contribution by fifty dollars (\$50). This will result in a 2007 City contribution of seven hundred eighteen dollars (\$718) that is inclusive of the one hundred dollar VEBA contribution.
- For 2008 and 2009, the City proposes to pay a flat dollar amount that is one hundred dollars (\$100) per month less than the 2007 amount. This would be a City payment of six hundred eighteen dollars (618) per month toward employees selecting insurance and would continue to be inclusive of the one hundred dollar (\$100) VEBA contribution in the existing contract language.
This position is well beyond the PEIP instruction that it “strongly encourages participating employers to pay a flat dollar amount equal to at least 50% and no more than 100% of employee premiums charged by the lowest cost plan available.” Contrary to the PEIP position, it is \$241.77 **beyond** the \$376.34 premium of the lowest cost plan available (the PEIP HSA Plan). Employees would still have this amount to utilize in the City’s flexible spending plan.

- Where the City was not a participant in this decision to have this group leave the insurance pool, the City will be required to establish and pay for separate administration of the plan and the balance of the City employees who remain in the City's insurance pool suffer because of this decision by the Police Officer group, it is most equitable that the City not continue to fund this destructive decision at the existing level.
- The City noted that it anticipated that the amounts that the City does not have to pay toward these Officers will be used as an administrative cost offset and, more importantly, will be used in future years as an enhanced City contribution to the increased costs to the employees in the City pool will face as a result of the Police Officers' action (for 2008 this is approximately fifty dollars per month). Most importantly, it will operate as an incentive for the Police Officers group to reconsider its decision in two years (the PEIP obligation is a statutory two-year obligation) and return to the City pool.
- A decision to abandon a larger group in order to obtain a short-term gain at the expense of the larger group should not be rewarded, either in negotiations or arbitration. Dealing with insurance problems collectively as a single employer entity has always been favored as the best approach in dealing with this difficult issue.
- The Union argued that it was now willing to accept the increased amounts offered by the City and accepted or imposed (on the Police Sergeant group).
- Consideration of this issue rests on the material submitted by the City, as the Union did not supplement its argument other than by now claiming internal equity. Given the circumstances leading to the Officer group abandoning their fellow City employees and the resulting increase in premiums to the remaining employees, internal equity is no longer possible given the differing insurance programs. Accordingly, the City's argument as presented at the hearing fully supports the City's modified final position on this issue.
- As the Arbitrator may have quickly surmised at the hearing, despite the extended negotiations through 2007, this issue was no closer to resolution than when it initially surfaced. The Officer group's obligation to stay in this PEIP plan for two years means that the parties need to have a short

term resolution of the City contribution issue, a sufficient offset to soften the impact on the other employee groups in the City's pool and, most importantly, a strong incentive for this group to abandon their currently destructive decision.

- The City's proposed resolution of the matter accomplishes all of these objectives. It does not harm the employee's in the Officer group in that the City still contributes toward the cost of the health insurance coverage and provides additional amounts to purchase other coverage (or take cash). It creates an incentive for this group to consider a return to the City pool in the future when its two-year obligation expires.

THE UNION PRESENTS THE FOLLOWING ARGUMENT IN SUPPORT OF ITS POSITION:

- The Union amended its position at the hearing to accept the City's final position dollar amount for all three years in question. However, the City changed its position asking for a substantial decrease from that provided to all other benefit eligible employees.
- The Police Officers exercised their statutory rights to have their insurance coverage provided by PEIP. The City's contention that this was an eleventh-hour action to abandon fellow City employees is not true.
- On December 20, 2006, the City presented the Union Memorandum of Understanding regarding the issue of these Officers moving to PEIP (Union Exhibit at page 231-232).
- This Memorandum of Understanding was authored prior to the City's January 5, 2007 response to the Bureau of Mediation Services (BMS) request for final positions (Union Exhibit at page 215).
- In the City's final positions there is no mention of a differing contribution amount for health and other benefits in the event these members move to PEIP. The City knew well the possibility these members might switch their health insurance to PEIP.

- The true eleventh-hour maneuver is the City change in its insurance contribution position at arbitration. The members of this bargaining unit had no idea their insurance contribution for 2007 would be at issue.
- The Memorandum of Understanding only speaks of renegotiation in 2008 if the members of this bargaining unit move to the PEIP program. Had the Union known at the time of the submission of final positions that the City would make an eleventh-hour attempt to reduce the City's health insurance and other benefits contribution amount, the members of this bargaining unit would have been able to take that position into consideration.
- Regardless, there is the fact that members of the Public Works Bargaining Unit belong to a different insurance plan than other City employees, yet they receive the same City contribution toward the premium for hospitalization-medical insurance as all other City employees; \$738 per month in 2007; \$778 per month in 2008 and \$818 per month in 2009 (Union Exhibit at pages 237-238). This is the same amount presented by the City in its final position and accepted by the Union.
- The City quotes this Arbitrator's Hubbard County Award as part of its rationale for reducing the health insurance contribution amount for members of this bargaining unit. However, this instance is very different. The City does not have a uniform health insurance plan as evidenced by Public Works belonging to a separate insurance plan. The City only has a uniform contribution amount towards differing plans.
- The City's proposal to reduce the contribution amount towards health insurance and other benefits is an effort to punish the members of this bargaining unit for exercising their statutory rights to move to the PEIP insurance plan as established by the state legislature.
- Finally, if the cost of the PEIP insurance plan were to raise dramatically over the next few years over that which other City employees pay, would the City propose to raise the insurance contribution for members of this group to compensate? I believe the answer to this question would be no, and the City in such case would surely use the decision of arbitrator Jeffrey Jacobs 2006 decision in LELS v City of Winona, BMS #06-PN-0650 when he stated:

“For 2006, the employer will contribute to each employee covered by this Agreement \$331.00 per month for employees selecting single coverage and \$929.00 per month for employees selecting dependent coverage or, an amount equal to the cost of the lowest plan option of the City-designated insurance plan(s) for single or dependent coverage, **or an amount equal to that established for any other City of Winona employees, whichever is greater.**”

“Notwithstanding the foregoing in no event shall the City’s contribution to the Union designated insurance plan exceed the total monthly premium payment for an employee participating in the Union designated insurance plan.” [Emphasis Added]

- The Union’s position to accept the Employer’s initial proposal to the BMS in respect to insurance contribution amounts is fully supported by the evidence and should be awarded. This is the same contribution amount as for other City employees, **including those not participating in the City-designated insurance plan**, and is supported by prior arbitration precedent.
- The City was well aware of this possibility prior to submitting their final positions. To award any lesser amount would only serve to punish the members of this bargaining unit for exercising their rights by state statute as established by the Minnesota State Legislature.

DISCUSSION – ISSUES 5, 6 & 7

The instant matter presents a perfect example of why appropriate pooling of risk is essential to affordable insurance premiums. For insurance to be affordable to those of higher risk, the insurance pool must also include those of lower risk. Hence, the importance of a common insurance pool that includes all employees of all risk categories.

In the instant case, the horse is already out of the barn, so to speak. The Public Works Unit does not participate in the City’s own plan and, effective January, 2008, the Police Officers no longer participate in the City’s own plan.

Together, the Public Works and Police Officer units comprise a significant portion of the City's work force, and quite likely, represent a lower level of risk than that of City employees as a whole. The record shows that all but one Police Officer has single coverage, which is an indication of a lower risk category. The effect of all this, as the Employer emphatically points out, is higher premiums for the employees that remain in the City's own insurance plan

Although the Arbitrator is not privy to the reason the Police Officers chose to become members of PEIP, it can be safely assumed that it was, at least in part, an economic decision.

The record shows that the single coverage premium under PEIP, depending on which one of the three options is selected, is from approximately \$50 to \$132 per month less than the single premium under the City's own plan. Family coverage under PEIP ranges from about \$217 lower to \$49 higher, depending on the coverage option selected. However, PEIP offers an "Employee plus One" option, as an alternative to full family coverage, which is about \$307 to \$481 lower, depending on the coverage option selected, than family premium under the City's own plan.¹⁹

The October 2007 PEIP proposal to the Police Officer Unit states that: "PEIP coverage was designed to provide long-term rate stability by pooling your group's experience with that of other public employee groups." The PEIP proposal also explains the new "Advantage Plan" available for enrollment effective January 1, 2007:

"The PEIP Advantage Plan is based on the very successful Minnesota Advantage Plan, a cost tiered health benefits plan serving 120,000 state employees and their dependents. The Minnesota Advantage Plan has saved the State and its employees millions of dollars, while creating new levels of competition and incentives for efficiency in the healthcare market. In 2006, the State's Minnesota Advantage Plan experienced a 0% increase.

The Department of Employee Relations (DOER) administers both the State employees plan and the PEIP program. DOER's Minnesota Advantage Health Plan has been awarded the 2004 Innovations Award from the

¹⁹ City Exhibit #16.

Council of State Governments (CSG), Midwest Region. CSG's annual Innovations Awards showcase and share states' best programs and policies. . ." ²⁰

As displeased as the City may be with the Police Officers decision to join PEIP, it is without authority to stop them, as state statute (Minn. Stat. Sec. 43A.316) provides them this right.

The Arbitrator finds the City's objection to Police Officers leaving the City's own group tempered by the fact that the Public Works Unit employees also have their own plan. At some point, the City must have voluntarily agreed to the arrangement where the Public Works Unit employees have coverage through their Union's plan. The record shows that the City makes the same contribution to Public Works Unit employees as it does for employees in the City's own plan. ²¹

The disputed issue before the Arbitrator is the appropriate City contribution to the Police Officers now that they are enrolled in PEIP. The City proposes a lesser contribution for Police Officers than provided for other employees. The City argues that this is an appropriate to offset the higher premium cost incurred by the City's plan, due to the Police Officers joining PEIP.

In fact, the City proposes to, in effect, take back some of its 2007 contribution to the Police Officers by reducing the 2007 increase from \$70 to \$50. The City's reasoning is that some of the 2007 contribution (\$20) was, in effect, an advance on 2008 and 2009 premiums (\$10 each year) which was added to the 2007 contribution to assist employees with the unusually high 2007 premium increase (25%).

The City's reasoning, that taking back \$20 of the 2007 contribution is justified, is that Police Officers are now (in 2008) experiencing economic gain by being in PEIP, while employees remaining in the City's own plan have higher 2008 premiums as a result.

²⁰ City Exhibit #16.

²¹ Union Exhibit at page 238.

The City's initial position, when the impasse was certified to arbitration, was to provide the Police Officers with the same contribution as is being provided to all other employees. However, the City has modified its position as follows:

- For 2007, adjust the contribution by reducing it \$20 to \$718, per month, inclusive of \$100 to VEBA.
- For 2008 and 2009, a City contribution of \$618 per month, inclusive of \$100 to VEBA.

The City argues that the above contribution is well beyond the PEIP recommended employer contribution of, "at least 50% and no more than 100% of premiums charged by the lowest cost plan available." The City argues that the \$618 City contribution is \$241.66 beyond the \$376.34 premium of the lowest cost plan available (PEIP HSA Plan). The difference of \$241.66 would still be available to the Police Officers in the City's flexible spending plan.

The City further argues that, the difference between the contribution level for employees in the City's plan and the \$618 for Police Officers can be used to enhance City contributions to employees in its own plan in future years and to cover administrative costs.

DECISION, ISSUES 5, 6 & 7:

The Arbitrator finds the Police Officer Unit, having selecting a different health plan than what is offered by the City, essentially the same as the Public Works Unit having their own plan. The City's contribution to employees in the Public Works Unit is the same as to employees in the City's own health plan.²² While the City was without authority to prohibit the Police Officers from enrolling in PEIP, the arrangement with the Public Works Unit was undoubtedly via mutual agreement between the City and the Union.

The Arbitrator finds that to treat the Police Officers less favorably, under the City's uniform benefit program, because they have exercised a legal right provided under statute, even though it has had a negative effect on premium in the City's own plan, unwarranted.

²² Union Exhibit at page 238.

The City argues that the PEIP recommends that the employer's contribution not be greater than the lowest cost plan. However, it is noted that the City's 2008 contribution of \$778 (\$668 plus \$100 VEBA) is \$270 higher than the single premium in the City Plan lowest cost option (\$508). In fact, the highest cost option under PEIP is higher than the highest option under the City's own plan (PEIP Advantage Family = \$1,285.78 - City Plan Family = \$1,271).²³ Presumably, the difference between the actual premium of the option selected by Police Officers under PEIP and the City's contribution can be handled in the same manner as it has in the past for employees selecting a premium option lower than the City's contribution.

In the wage issues, the Arbitrator's decision was to support the principle of uniform treatment of employees absent compelling reasons indicating otherwise. The Arbitrator's finds no compelling reason to do otherwise in this insurance matter.

AWARD. ISSUES #5, #6 & #7

The City contribution shall be the same as provided for all other benefit eligible employees. Article 12.1 of the Collective Bargaining Agreement between the Parties shall be amended as follows:

“... Employer will make monthly contributions towards the cost of health and other benefits to each eligible member of the bargaining unit in the amount of \$738 (\$638 less the above VEBA contribution amount). For 2008 and 2009, the Employer agrees to contribute up to \$40 additional dollars each year towards the increased cost of benefits including health, life, disability, and other benefits offered by the City for regular employees and their dependents.

..”

ISSUE #8: SICK LEAVE – WHETHER TO ELIMINATE LIGH DUTY, Article 11.9

POSTIONS OF THE PARTIES:

²³ City Exhibit #16 and City Post Hearing Brief at page 14.

UNION: Opposes any change to the existing CBA language.

EMPLOYER: Eliminate existing Language of Article 11.9.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- The need for the change lies in the fact that there are no qualifiers associated with this light duty. There is no time limitation except as recommended by the employee's physician. Taken as written, a physician could recommend a permanent limitation that the City would be required to honor for the duration of the Employee's career.
- Given the size of the department, simply removing an officer from the full range of duties potentially forever puts an undue strain on the department and the citizens of Bemidji. Coupled with the fact that there is no limitation on the number of individuals who could be on light duty at the same time, the provision has the potential effect of reducing the number of officers that may be available for full duty at any given time.
- Equally important, this provision removes a significant incentive for an employee who is injured or ill to seek to recover to full status. Where the City is obligated to indefinitely provide light duty, there is no incentive for an employee to rehabilitate to return to their full, and often less desirable, elements of the job.
- In addition to this need, there is no independent basis to retain this language. The present language does not exist in any of the other collective bargaining agreements at the City. Accordingly, it is not supported by internal equity.
- In the alternative, or in addition, issues 10-15 noted below are Union requests for changes. The City response of a "quid pro quo" to these requests included this provision. Accordingly, any consideration of the changes requested by the Union should include consideration of the appropriate trade of proposed provisions initiated by the City. This represents an application of the arbitral principal that arbitration should utilize a standard of "what the parties would have negotiated themselves" in addressing issues.

- Consideration of the arguments advanced by both parties reveals that this is not simply a sick leave utilization article. As the Union pointed out, this is an economic article. As a retirement funding mechanism, it no longer primarily serves as a time off provision but rather becomes an additional pay provision. This hidden economic benefit highlights the City's argument on wages that the varying wage and benefit structures between cities are not easily measured. More importantly for purposes of this article, it creates a strong incentive for use without any accompanying limitation. Along with the lack of any internal comparables, this potential creates a solid basis for limitation.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- The City as the proponent of this change bears a heavy burden of persuasion. The evidence and arguments in support of this change should be compelling.
- The unique nature of the law enforcement profession places demands on Police Officers that require a much greater degree of good health and lack of physical incapacity than required for other professions. Most employees can come to work with a broken appendage, eye injury, bad back or other temporary impairment. Police Officers can't. A Police Officer is much more likely to find it necessary to use sick leave in the event of injury. This current contract provision allows these employees to continue to come to work.
- Additionally, this article has an economic benefit for the members of this bargaining unit. Sick leave is converted to severance pay upon retirement. Sick leave in excess of 960 hours may be converted to pay or vacation at the rate of eight hours to four hours on December 31 of each year. If Officers needed to use sick leave because of the elimination of this benefit, that member would suffer a negative financial impact. Finally, there is no demonstrated reason to change the language of this article. There has not been a rash of instances where the Employer had to make undue light duty assignments to accommodate these Officers.
- The City offered nothing other than generalized unsubstantiated statements to support their burden of a compelling argument for changing

the labor agreement. No evidence was presented to show a system gone awry or Officer on light duty making no attempt to rehabilitate themselves and return to work. "As the Union argues, the burden of showing a need to change is substantial in interest arbitration." Law Enforcement Services, Inc. v. Redwood County. BMS 06-PN-0476 (2006) (Remington, Arb.)

DISCUSSION, ISSUE #8

The language in dispute has been in the CBA for some period of time. There is nothing in the record to indicate how long this language has existed. There is nothing in the record citing any actual situations where the language has placed an undue burden on the City by having more Officers on light duty than could be reasonably accommodated, or on light duty for an undue period of time.

The Arbitrator agrees with the City's argument that the language is "open ended" in the sense that it has no specified limits, which could lead to an unworkable situation. However, the absence of any specific instances being cited where the language has proven unworkable leads the Arbitrator to believe that the Parties have applied it in a reasonable manner (that it is not meant to accommodate employees when meaningful work is not available and not meant to be other than a short term accommodation that has benefit to both the City and the employee). It is noted in the record, that both the Union and City representatives are relatively new and accordingly may lack background in the historical application of this language.

As referenced in the Union's argument, Arbitrators are reluctant to disturb language that the parties have negotiated and normally prefer to leave the matter for the parties to resolve in future negotiations. There can be history associated with language of which the Arbitrator may not be aware, such as trade offs.

This Arbitrator makes an exception where the language has shown to be unworkable for either or both parties and they have been unable to resolve it through negotiations. In the instant case, the Arbitrator does not find evidence that the language has proven unworkable and defers the matter to the Parties for resolution in future negotiations.

AWARD: ISSUE #8

The language in the CBA, Article 11.9 shall be unchanged.

ISSUE #9: WHETHER TO ELIMINATE INVESTIGATION/DISCIPLINE,
Article 14.5

POSITION OF THE PARTIES:

UNION: Opposes any change to in existing language.

EMPLOYER: Eliminate the language in Article 14.5.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- Laws of Minnesota (Minn. Stat. Sec. 179A.20, Subd. 2) prohibit contract language provisions that are in “conflict with . . . the laws of Minnesota.”
- There are a number of laws that conflict with this contract provision related to investigations. For example, the Minnesota Human Rights Act and federal law impose a duty to investigate on any employer who receives a charge of discrimination. The Minnesota OSHA statute also does not limit the City’s obligation to investigate workplace safety issues. A third significant law that provides a contrary duty on the City is the Minnesota Peace Officers Standards and Training Board (POST). The applicable regulations require the City to investigate reports of claimed violations of the POST Board regulations. These regulations do not limit investigations to one year after the alleged act. Rather the limitation is based on the date that the reporter learned of the event (Minn. R 6700.1600).

6700.1610 REPORTING OBLIGATIONS AND COOPERATION.

Subpart 1. **Reporting conduct violation.** A person with knowledge of conduct constituting grounds for action under Minnesota Statutes, Chapter 214, or the board’s regulatory provisions in part 6700.1600 may report the violation to the Board.

Subpart 2. **License reporting requirement.** A license shall report to the board and chief law enforcement officer any action; inaction or condition of that licensee which the licensee reasonably believes would constitute grounds for disciplinary action under any of the board's regulatory provisions.

Subpart 3. **Report submittal requirement.** Reports required by this part must be submitted no later than 90 days after learning of the reportable event.

The above examples demonstrate the City cannot limit its investigations to certain time frames with one year.

- The City should not be limited to disciplining an individual for conduct that has occurred within the past year, particularly where the City does not or is not able to discover a violation for a year because of a willful cover-up of the event by an employee. There is no public policy reason why discipline may be limited in this instance.
- The limitation on the investigation may also be harmful to an employee. In the event that an employee is or has been paid incorrectly under a standard established by the Fair Labor Standards Act, the employers statutory duty is to investigate the matter back at least two years (three years if there is a willful violation). The provision limiting this investigation to one year would prevent an employer from performing an investigation that may aid the employee.
- Finally, the clause references without definition an "investigation." Whether a review, informal inquiry or simply asking a question constitutes an investigation is not clear. For example a claim of a binding past practice raised by a union, related to employee action or inaction, could not be "investigated" by the City without violating this provision.
- Consideration of the City and Union arguments supports elimination of the existing language. The duty to investigate wrongdoing on the part of public officials – and particularly those entrusted with the degree of authority of a police officer – is a city's paramount obligation. There is no public policy reason why the City should be prohibited from performing its duty to investigate and take action against an individual, simply because of a limited time frame. The parties and arbitrators, who hear

such cases, are able to determine whether “old” claims are deserving of special consideration because of faulty memory or poor records. There also is no evidence to support the Union’s conclusionary statement that old complaints are not likely to be serious. Finally, the fact that the parties have not encountered a “rash of disciplinary instances” that were protected by this language is not a reason to continue the language in the contract. Elimination of this procedural defense prior to the first single serious instance simply reinstates the City’s ability to perform an import duty for its citizens.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- The general rule regarding a proposal for significant changes to the contract is the party making the proposal has a heavy burden of persuasion through the use of compelling arguments and evidence to support its position.
- Contrary to the City’s assertion for the need to eliminate this article, the placement of the language relating to disciplinary investigations in this section of the contract clearly shows the intent of the article pertains only to an investigation likely to result in discipline.
- No restriction is placed on the City to conduct investigations as required by law, rules and regulations. The City can implement corrective policies so long as they are not disciplinary nature. In the event of a Peace Officers’ Standards and Training rule violation, the POST Board is not bound by this article and can conduct an investigation and take action if it determines appropriate.
- This article rightly recognized that “old” complaints are not likely to be serious. It also recognizes the importance of timely action for alleged infractions, and recognizes the complications of a “stale” complaint colored by faulty memory and poor records.
- The reasons the Employer presented for the removal of this language are not compelling. The City failed to meet their burden. The Union’s position is reasonable and should be awarded.

DISCUSSION, ISSUE #9.

At issue in the language of Article 14.5 is whether it is in conflict with laws, rules or regulations by prohibiting investigation of a work related complaint or allegation, if it is one year or more old. It in effect places a “statute of limitations” on any complaint one year or more old.

The City cites several laws, rules and regulations that it contends may require an investigation that Article 14.5 precludes.

Among the laws, rules and regulations cited by the City is Minn. Stat. Sec. 179A.20, Subd. 2, that prohibits contract language that is in conflict with the laws of Minnesota.

It is also noted that Minn. Stat. Sec. 179A.16, Subd. 5, places conditions on the Arbitrator’s jurisdiction with respect to the conformance of contract language with laws, rules, ordinances, resolutions, etc. This statutory provision prohibits the arbitrator from a decision that would be in conflict with them:

“. . .A decision [by an arbitrator] which violates, is in conflict with, or causes a penalty to be incurred under: (1) the laws of Minnesota; or (2) rules, promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with this chapter, has no force or effect and shall be returned to the arbitrator or panel to make it consistent with the laws rules, charters, ordinances, or resolutions.”

It is also noted that the Parties CBA contains in Article 18.1, a “Savings Clause” that provides as follows:

“The Agreement is subject to the laws of the Unites States, the State of Minnesota and the City of Bemidji. In the event any provisions of this Agreement shall be held to be contrary to law by a court of competent jurisdiction from whose final judgment or decree no appeal has been taken within the time provided, such provision shall be voided. All other provisions of this agreement shall continue in full force and effect. The voided provisions may be renegotiated at the written request of either party.”

Although the CBA “Savings Clause” provides a remedy for any contract provision held contrary to law, it requires that the remedy must be through the

courts, which may be overly cumbersome and untimely if a challenge arises with respect to the legal conformity of Article 14.56.

The Arbitrator finds the language of Article 14.5 somewhat ambiguous. For example: Does the one-year limit apply to the date of the alleged misconduct or to the date the complaint was filed?

The Arbitrator is reluctant to disturb the language in Article 14.5, for the same reasons set forth in the Arbitrator's decision in the previous issue (#8). However, the Arbitrator finds the City has made a compelling case with respect to the potential conflict application of Article 14.5 may have with the laws, rules and regulations cited. Further, the statute (179A.16, Subd. 5) precludes the Arbitrator from a decision that may be in conflict with laws, rules, regulations, etc. Considering the compelling evidence that Article 14.5 is in potential conflict with the law, rules and regulations cited, the Arbitrator finds a decision not to remove this language would put the Arbitrator in violation of the statute.

AWARD: ISSUE #9

The language of Article 14.5 shall be removed from the CBA.

ISSUE #10: UNIFORMS

The Parties stipulated that they have reached mutual agreement that the CBA language in Article 15.4 will remain unchanged.

ISSUE #11: UNIFORMS – PART TIME

The Parties stipulated that they have reached mutual agreement that the CBA language in Article 16.1 will remain unchanged.

ISSUE #12: OVERTIME – SPECIALTY PREMIUM PAY

POSITION OF THE PARTIES:

UNION: Add new article 8.8: Any employee serving in a special assignment, including but not limited to, Community Service Officer (CSO), Gang Task Force (GTF), Drug Awareness Resistance Educator (DARE), School Liaison Officer (SLO), Auto Theft Officer (ATO) and Gang Resource Officer (GRO), will be paid an additional 2.5% above their regular hourly rate of pay only for the duration of the assignments.

EMPLOYER: Opposed to any new language in this area.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- Special assignments are worthy of premium pay. All of the special assignments listed require a combination of specialized training, skill, and experience including investigatory skills and experience.
- There is a significant “time management” stressor placed on the individuals in these special assignments. Patrol Officers have a specified work shift where they do everything from security patrols and traffic control to responding to calls for service including accidents, crime response, and emergencies. However, at the end of their shift, they rarely have the stress of “work waiting” for them. This is not the case for Officers working the special assignments.
- In all jobs where there is “work waiting” one’s mind, even away from work, is often preoccupied with thoughts of how best to address the work waiting for the employee.
- D.A.R.E. Officers have the responsibility of preparing lesson plans, instructing their students, and the stressors of working in schools.
- Gang Task Force Officers, Auto Theft Officers and Gang Resource Officers work assignments that require these individuals to often work in uncomfortable and sometimes dangerous work environments.
- Bemidji Police Department Investigators are paid 5.9% to 6.7% over Patrol Officers depending on pay scale positioning.

- The assignments of Gang Task Force, Auto Theft Officer, and Gang Resource Officer all encompass investigatory functions.
- School Resource Officers perform investigatory functions relating to crimes committed in the schools or by students, in addition to the school setting stressors.
- All of these Specialty Officers perform the investigatory functions without investigator compensation.
- These specialty assignments are positions above and beyond that of a Patrol Officer and should be compensated as such.
- The Union position is supported by ample reasoning and evidence and should be awarded.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- The Union, as the party proposing to change to existing language, bears the burden of showing the need for the change.
- Arbitrator, Richard Anderson, has noted that, “arbitrators traditionally are reluctant to grant new economic benefits that have not been established during the collective bargaining process, and then only where there is overwhelming justification for their inclusion.” City of Deephaven and LELS, BMS Case No. 00-PN-1705 (Anderson, Arb.) (December 16, 2000) at page 22.
- In the instant case there is no overwhelming justification for these differentials.
- Internal equity does not support granting these economic benefits. As an initial matter, there is no other formal compensated program at the City for training new employees. Accordingly, the proposed FTO change is not supported by internal comparables.
- Other employees at the City do not receive specialty pay for working elements of their jobs.

- There is no dispute that the duties that the Union seeks to specially compensate fall within the expected parameters of the Police Officer classification. These are simply specialized police duties.
- There is also a particular element of internal equity that dictates against this request. As Arbitrator Gallagher noted in the interest arbitration award covering the Police Sergeants bargaining unit, the pay gap between Police Officers and Sergeants slipped from over 13% to 11% in the last contract.

“. . . The departure from the pattern is also justified by the evidence showing that compensation to the Sergeants has eroded over time.”

- Adding a 2.5% differential for seven different assignments would simply restore and add to this shrinking pay gap.
- The arguments presented by the parties on this issue do not support adding economic differentials to these special duty assignments.
- The fact that they are not supported by internal equity dictates against their inclusion. This is an even more important factor because of the wage compression issue noted by arbitrator Gallagher in the police Sergeants award.
- Adding 2.5% to existing rates for special duty assignments (an Officer with multiple duties would be able to compound such payments) would exacerbate this Officer to Sergeant compression problem.
- The limited incidence of special duty pay among other cities also dictates against including these amounts for special duty pay. Unless there is an overwhelming number of cities already paying these amounts, there is no external market basis to include such differential outside the give and take of traditional negotiations.
- The City pays for the additional course training and already pays for the additional experience by the movement through the existing wage system.

- The duties identified within the specialty pay requests are within the general scope of duties for a Police Officer. For example consideration of the investigative portion of the Gang Task Force, Auto Theft Officer and Gang Resource Officer highlights the similarities in these functions and those expected for all Officers.
- The Union's Exhibit at pages 268 and 269 is the job description for Police Officer at the City. References to the job description shows that investigation is a regular part of an Officer's regular duties:
 - Works on rotating shifts performing . . . *investigation* and arrests of persons involved in crimes. . .
 - Patrols City streets, . . . *investigate* misconduct. . .
 - Responds to emergency radio calls and *investigates* accidents, robberies . .
 - Conducts follow-up *investigations* of crimes. . .
 - Participates in *investigating* criminal law violations . . .
 - Conducts patrol activities including directing traffic and *investigation* of reported or observed violations of law.
- The FTO specialty pay also does not exist in other City classifications. Only Fergus Falls and Worthington out of the 12 comparison cities provide specialty FTO pay, according to Union Exhibits. Two out of 12 comparison cities does not provide a sufficient basis to support the Unions request.
- There is no basis to award these specialty pay provisions in arbitration. Rather, this issue is better left to negotiations by the Parties.

DISCUSSION: ISSUE #12.

The record shows that although some cities pay a differential for certain Police Officer assignments, it does not appear to be common among the cities used by the Parties for comparison purposes. Of the nineteen cities appearing in the three comparison groups referenced by the Parties, only two pay a differential

for School Liaison (Cloquet and Thief River Falls), and only one for Drug Task Force (St. Peter).²⁴

The Arbitrator finds the City's arguments and evidence most compelling. The Union's position, in effect, involves placing a value on each of the various tasks that fall within the general duties of a Police Officer. A secondary issue is how specialty assignments would be made if pay were determined by the task performed.

There is also the matter of the pay spread between Police Officers and Sergeants. Awarding the Union's position would more than offset the effect of Arbitrator Gallagher's award to increase the differential.

The Arbitrator finds it best for the Parties to resolve issues inherent in specialty pay through the negotiation process.

AWARD; ITEM # 12

The Union's position for specialty pay is denied.

ISSUE #13: OVERTIME – WHETHER TO ADD “FTO” SPECIALTY PAY

POSITIONS OF THE PARTIES:

UNION: Add new Article 8. An employee assigned Field Training Officer (FTO), will be paid an additional 2.5% above their hourly rate of pay for all hours spent in the training of new employees.

EMPLOYER: Opposed to any change in existing language.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

²⁴ Union Exhibits at pages 168, 169, 254, 255, 256 & 257.
City Exhibits #12

- The City of Bemidji has training standards, in addition to those required for licensing, including a formal field-training program. This training requires a “trained” Field Training Officer (FTO) to work with a new Police Officer for approximately 14 weeks.
- The FTO must “sign off” that the new Officer has successfully completed assigned training objectives. The FTO’s evaluation of the new Officer’s performance is the principle factor in deciding if more training is necessary, and whether or not the new Officer should be terminated or retained.
- The FTO’s observations and documentation will inevitably be utilized to defend the City if an Officer who is terminated during the FTO period brings litigation against the City.
- The FTO has become an integral part of the hiring and evaluation process, which justifies adequate additional compensation.
- Formalized compensated FTO programs have become commonplace in Minnesota and Arbitrators have recognized the value of FTO’s in several recent awards:
 - LELS v. Scott County, BMS 01-PN-1152 (2002) (Miller, Arb.)

“The responsibilities for employees assigned to field training are great. The trainee’s impressions, and future work habits are formed at this critical stage of employment. It is at this juncture of employment when it is determined if the trainee has the necessary skills to continue as a peace officer.”
 - LELS v. McLeod County, BMS 03-PN-613 (2003) (Kircher, Arb.)

“FTO duties involve training and evaluating the work of new employees, duties that are not included in the training officers job description; and therefore, the jobs to which these duties are assigned may be under compensated on the wage matrix.”
- The responsibility of training and supervising a new Police recruit is a daunting assignment. The FTO is not only responsible for their own

actions and safety; they are also responsible for the actions and safety of the Police Officer under their supervision.

- If there is an expectation of an evaluative report on the part of an FTO, this is clearly beyond the scope of the job description for Police Officer.
- The City's job description for the position of Police Officer does list FTO as a peripheral duty (Union Exhibit at page 268), however nowhere in the job description of Police Officer is listed the responsibility to conduct ongoing performance evaluations, counsel personnel on job performance supervise the training and development of subordinate Police Officer or even the ability to train.
- All of the above duties and responsibilities are listed in the City of Bemidji job description for the position of Police Sergeant (Union Exhibit at page 272).
- The Bemidji Police Department Policy titled "Field Training and Evaluation Policy" (Union Exhibit at page 266) clearly shows FTO's do have the responsibility of making recommendations for the retention or termination of probationary Officers based on observed performance.
- The Policy also requires FTO's to evaluate trainees daily, and record these evaluations on a Daily Observation Report, indicating when trainees demonstrate competence. This Policy places trainees under the control of the FTO.
- The Union is merely requesting Officers assigned this significant responsibility be fairly compensated for these additional duties and responsibilities. The Union has clearly demonstrated the convincing need to provide compensation for those Officers assigned the responsibility and extra duties of an FTO.
- The Union's position should be awarded.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- See Employer's arguments presented in Issue #12. The Employer's arguments in Issue #12 also apply to Issue #13.

DISCUSSION, ISSUE #13.

The FTO premium pay issue is essentially the same as the “specialty pay” matter in Issue #12. As noted in the Arbitrator’s discussion of Issue #12, there is little precedence for FTO premium pay among other cities the Parties identified for comparison purposes. Only two of these nineteen cities (Fergus Falls and Worthington) pay a FTO premium.²⁵

It is also noted that, in the LELS v. McLeod County award referenced above, Arbitrator Kircher did not initiate FTO pay, but awarded an increase in the FTO premium that was already in effect.

Due to the similarity between Issue #12 and Issue #13, the Arbitrator’s finding and reasoning is the same. Therefore, to avoid repetition, the Arbitrator’s discussion and findings set forth in Issue #12 will not be repeated here.

AWARD; ISSUE #13

The Union’s position for Field Training Officer specialty pay is denied.

ISSUE #14: OVERTIME – COMPENSATORY OPTION

THE POSITION OF THE PARTIES IS AS FOLLOWS:

UNION: Add Article 8.1: “Overtime compensation shall be paid as compensatory time or pay, and is the employee’s choice. Accrual of compensatory cannot exceed eighty-eight (88) hours. Use of compensatory time is subject to the scheduling needs of the department and will be considered the same as vacation leave when requests are submitted. Compensatory time earned and unused at the date of separation by an employee shall be compensated at their current rate of pay.

²⁵ Union Exhibit at pages 168, 169, 170, 277, 278, 279. Employer Exhibit #12.

EMPLOYER: Opposed to any change in the existing agreement.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- The position of Police Officer involves shift work resulting in significant time away from family. The option of accumulating compensatory time in lieu of overtime is one avenue that may be used to minimize the disruption on an Officer's family obligations.
- Compensatory time for both non-union FLSA covered and exempt employees is currently allowed under city policy, section 4.0 (Union Exhibit at page 281).
- FLSA allows a public safety employee to accrue up to 480 hours of compensatory time (Union Exhibit at page 283).
- The Union's request to accumulate up to 88 hours is significantly less than allowed by FLSA.
- The Union's request is fair and reasonable and should be awarded.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- Given the extensive change that would occur between moving from a pay for work concept to a pay for time off for work concept, Arbitrator Bagnanno's caution is appropriate:

First, since negotiated changes to the Labor Agreement are superior to arbitrated changes, arbitrators are reluctant to (1) strike down matters of tradition which have helped to frame the relationship between the parties and (2) write innovative language designed to alter that relationship. Arbitrator imposed inventions or innovations which alter the basis (sic) contractual relationship between the parties carry with them considerable uncertainties with respect to future questions involving the ways said changes will be interpreted and applied. In this Arbitrator's opinion his peers are acting responsibly when they refrain from introducing

basic contractual changes which could place the quality of the parties' relationship at risk. This principle is qualified, of course, by a record which supports the conclusion that the sought-after change would have resulted through negotiations were it not for the fact that the parties ended up in arbitration."

Minnesota School Employees Association and ISD No. 11, Coon Rapids, BMS Case No. 84-PN-52-A (Bognanno. Arb.) (1984), at pages 7-9.

- The Union's request is not supported by internal equity. Compensatory time off does not exist in the other collective bargaining agreements at the City. Overtime compensation is paid for the other groups.
- Equally important, substitution of time off for pay, with the control in the hands of the employee under the Union's proposed change, constitutes a significant change and administrative burden on the City. A concise explanation of the benefit of paid time versus a compensatory time off system was contained in Arbitrator Flagler's interest Arbitration Award for the Anoka County Deputies two decades ago. In that arbitration, the Union requested that employees be granted the option of taking overtime pay of compensatory time off. In deciding in favor of the County, Arbitrator Flagler stated:

"Even though employees would be required to have this time off approved under the Union proposal, the basic change in the present system would inevitably create pressures on the County's discretionary authority over scheduling work. Such scheduling problems can be exacerbated during peak periods of public safety need – particularly when other factors operate such as colds and flu season."

Anoka County and Teamsters Local 320, BMS Case No. 88-PN-288 (Flagler, Arb.) (1988) at page 12.

- The use of compensatory time off, which has the effect of creating additional compensatory time off, also provides a strong example of why compensatory time off should be denied. The employer no longer maintains exclusive control over the use of accrued compensatory time off. This lack of control over use of compensatory time off allows employees who accrued compensatory time off to take time off, even

when it requires the employer to fill in for the absent employee by paying an individual overtime for substituting. For Example:

“An employee who works two hours of overtime receives three hours of compensatory time off. The Employee takes the three hours off on short notice and the employer must replace the employee with a second employee who is earning overtime for the three hours. The second employee earns four and one-half hours for this work and takes off the following week. The employer replaces the second employee with a third employee who works the four and one-half hours and receives six and one fourth hours of compensatory time off.”

- As this example shows, the original two hours of work has cost the employer 6.25 hours with no end in sight as long as the employer is shorthanded and has to replace the employee with another employee working overtime. A compensatory time off system works well where there is cyclical work and down time such as in public works. It does not work well in a police department where coverage must be provided. This is particularly a problem in departments like Bemidji where coverage may be an issue.
- The evidence supports no change in the existing language of the agreement. There is no identified need for this time off. The other bargaining units all pay for overtime rather than allow the employees to select time off. The non-union program is limited to use at the employer/supervisor’s discretion rather than the employee’s discretion. This is a significant distinction.
- The change proposed by the Union represents a potential scheduling problem. It should be added in the agreement, if at all, by negotiations.

DISCUSSION, ISSUE #14.

The Arbitrator finds the City’s arguments most compelling. Although sympathetic to the inconvenience shift and weekend work can cause for family life, the Arbitrator finds the comments noted above by Arbitrators Bognanno and Flagler well reasoned and on point with the instant issue.

As noted by the City, compensatory time off can be an effective alternative to cash payment for overtime in situations where the workload tends to be cyclical. However, in public safety operations where staffing is required 24 hours a day and seven days per week, the compounding effect of compensatory time can lead to unworkable staffing and budgeting problems.

The record shows that the absence of a compensatory time off provision in the Police Officer unit is consistent with all other City bargaining units.

As noted by the Union, the City has a policy that allows the accrual of up to 40 hours of compensatory time for its non-union employees subject to the FLSA. Such an arrangement is common with administrative type employees that may have seasonal or other fluctuations in their workload. A compensatory time arrangement with such employees can be of mutual benefit to both the employees and the employer.

AWARD: ISSUE #14

The Unions request for compensatory time off is denied.

ISSUE #15, #16 & #17 – AMOUNT OF SHIFT DIFFERENTIAL, 2007, 2008, 2009

POSITIONS OF THE PARTIES:

UNION: An increase in the existing shift differential of \$0.25 in 2007, \$0.25 in 2008 and \$.025 in 2009.

EMPLOYER: Eliminate obsolete language in Article 8.7 and make no change in the 2006 shift differential amount of \$0.35 per hour.

THE UNION PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- Numerous studies show the adverse affect that shift work places on the health, well being, and family lives of shift workers. While not the only studies conducted, these effects are summarized concisely in a September

2000 study by the Australian Council of Trade Unions, (Union Exhibit at pages (296-297).

- The above study results were corroborated by 1997 study conducted by the National Institute for Occupational Safety and Health (Union Exhibit at pages 349-353).
- The stress of shift work can aggravate health conditions such as heart disease or digestive disorders.
- Working evenings and weekends results in these Officers often missing out on social and family activities.
- These workers end up being out of phase with the rest of the community including their family and friends as a result of working these unusual hours and days.
- Shift work not only affects the employee, but the employees' family must adjust their schedules and activities around the employee's hours and sleep schedule.
- Shift work can cause a multitude of health and safety effects including changes in natural body rhythm. The interaction between the health and safety effects of shift work and the impact shift work has on family and social life results in significant impact on the general health and well being of individuals who work shifts.
- The CBA provides shift differential compensation for those employees who work between 6:00 p.m. and 6:00 a.m. Most of the City's market comparables pay significantly greater compensation (Union Exhibit at page 379).
- The compensation these members receive for shift differential and the hazards associated with shift work should be increased because of the negative effects on the employee and their families, and also to more fairly compensate the members in their market.
- The Union's position is reasonable, supported by ample evidence, and thus should be awarded.

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- The Union, as the party proposing the change has the burden to establish the need for the change.
- As a straightforward economic request, shift differential increases are best left to the give and take of negotiations. In rejecting a shift differential request by the Union, Arbitrator Richard Anderson wisely and succinctly stated, “this new benefit is best left to the give and take at the bargaining table.” Suburban Hennepin Regional Park District and LELS, BMS Case No. 09-PN-986 at page 72 (Anderson, Arb.) (2003).
- In the present case, there was no proposed trade by the members of this bargaining unit. This simply represents an enhanced benefit requested by the bargaining unit members without anything in return.
- Internal equity also does not support the Union’s request. The Police Sergeants’ shift differential is the same \$0.35 per hour in the current collective bargaining agreement. There is no shift differential for Firefighters. The Operating Engineers’ Bargaining Unit has a snow and ice control premium of \$0.50 per hour, but this is a seasonal provision. The Liquor Store employees do not have any shift differential.
- As noted in the discussion regarding specialty pay, there is also a particular element of internal equity that dictates against this request. As Arbitrator Gallagher noted in the interest arbitration Award covering the Police Sergeant Bargaining Unit, the pay gap between Officers and Sergeants slipped from over 13% to under 11% in the last contract:

“. . . The departure from the pattern is also justified by the evidence showing that the compensation to the Sergeants has eroded over time.”
- Adding seventy-five cents per hour over three years to the Police Officers’ shift pay that the Sergeants will not receive will be destructive of Arbitrator Gallagher’s effort to move the Sergeants’ pay farther away from the Police Officers.

- Consideration of the City and Union arguments supports a determination of no substantive change to this provision and elimination of the obsolete language.
- While shift work may adversely affect individuals there is no evidence suggesting that this adverse affect is eliminated or reduced by an additional quarter per hour.
- It is also obvious that shift work is a necessary and hardly unanticipated part of a law enforcement career.
- Internal equity, particularly as it applies to the Police Sergeants, does not support the Union's request.
- The fact that three of the external comparable cities do not pay any shift differential support a determination that there is no universal external market consideration that must be matched.
- As an economic item, this shift differential issue is best left to the give and take of negotiations.

DISCUSSION, ISSUES #15, #16 & #17:

The Parties have through past negotiations agreed on the appropriateness of a shift differential for the Police Officers Unit. The 2006 shift differential rate was at \$0.35 per hour and had been increased by \$0.05 per hour in each of the prior two years.

The City argues that an increase in the Police Officer's shift differential will erode the pay differential established by Arbitrator Gallagher, as the Sergeants differential has not been increased. A review of Arbitrator Gallagher's Award indicates that shift differential was not at issue in the arbitration, but rather stand-by pay was.

There is no evidence in the record regarding the incidence of shift work among the Sergeants as compared to the Police Officers. Therefore, the Arbitrator has no basis to believe that one group experiences more or less shift work than the other.

Union Exhibit at pages 379-380 shows the shift differential rates paid by the twelve (12) cities the Parties use for market comparison purposes. This Exhibit shows that nine (9) of these twelve (12) cities pay a shift differential. The average shift differential paid by the nine (9) cities, in the time period relevant to the instant issue, is as follows:²⁶

2007 = \$0.45

2008 = \$0.47

2009 = \$0.49.

Based on the above comparison data, the Arbitrator finds justification for an increase in the shift differential for the Police Officers. The increase awarded is structured so as to not unduly erode the pay differential between the Police Officers and Sergeants.

AWARD: ISSUES #15, 16 & 17

The language of Article 8.7 shall read as follows:

“Employees shall receive shift differential pay, in addition to their regular pay, for hours worked between 6:00 p.m. and 6:00 a.m. For 2007 the amount is \$.35 per hour, for 2008 \$.45 per hour and for 2009 \$.50 per hour.”

ISSUES #18 #19, #20 & #21

²⁶ The Arbitrator computed these amounts by adding the rate for each of the nine (9) cities reporting a shift differential rate and dividing the sum by nine (9). One city reported two shift differential rates that were averaged. One city reported different rates for 2007, 2008 and 2009, which is reflected in the stated 2008 and 2009 rates.

The Parties stipulated that they reached mutual agreement on Issues #18, #19, #20 and #21 prior to the arbitration hearing. Therefore, these issues were not submitted to the Arbitrator for decision.

CONCLUSION

The Parties are commended on the professional and through manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving the disputed issues.

Issued this 28th day of February 2008 at Edina, Minnesota.

ROLLAND C. TOENGES, ARBITRATOR