

**IN RE ARBITRATION BETWEEN:**

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**AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES,  
AFSCME COUNCIL 65**

**and**

**CITY OF PAYNESVILLE**

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**AMENDED DECISION AND AWARD OF ARBITRATOR  
BMS 08-PN-0145**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**October 21, 2008**

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AFSCME Council 65,

and

**DECISION AND AWARD OF ARBITRATOR  
BMS 08-PN-0145**

City of Paynesville.

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**APPEARANCES:**

**FOR THE UNION:**

Teresa Joppa, Attorney for the Union

**FOR THE COUNTY:**

Scott Lepak, Attorney for the County

**PRELIMINARY STATEMENT**

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. The Bureau of Mediation Services certified 11 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated March 24, 2008. This is the parties' first contract.

Prior to the hearing the parties were able to resolve the following issues: (these are numbered as they appear in the BMS certification letter):

Issue #4 - Hours of Work – Language – Scheduling Article 17.3. The parties agreed to use the City's final position on this issue.

Issue # 6 Wages – Pay Plan And Structure – Article 15.1 – this was resolved at the hearing. The Union agreed with the City's position on this issue.

Issue #11 – Duration. The parties agreed to a 3-year contract.

**ISSUES PRESENTED**

The issues certified at impasse and in dispute at the time of the hearing are as follows:

1. Employer Authority – Management Authority - Article 4.2
2. Employer Authority – Position elimination - Article 4.3
3. Hours of Work – Work Schedule – Article 7.2
4. Hours of Work – SETTLED as noted above
5. Overtime – Calculation of Overtime and Premium – Article 8
6. Wages – Pay Plan Structure and Movement – Article 15.1 – SETTLED as noted above.
7. Wages 2007 – Amount of Adjustment Article 15
8. Wages 2008 – Amount of Adjustment Article 15
9. Wages 2009 - – Amount of Adjustment Article 15
10. Severance – Severance Pay/Retirement Insurance - Article 17
11. Duration – SETTLED as noted above.

**WAGES 2007, 2008 & 2009**

**UNION'S POSITION:**

The Union's position was for a starting pay level beginning at \$16.00 per hour and ending with top patrol pay of \$22.00 per hour in the first year of the contract, 2007. The Union proposed a 4% increase in each of the succeeding years of the contract, i.e. 2008 and 2009. Step increases would occur as they do presently for each employee on their anniversary date of hire with the City. The Union proposed thus the following pay scale:

**2007**

0 -1 yr <u>Step 1:</u>	1 yr+ - 2 yrs <u>Step 2</u>	2+ -3 yrs <u>Step 3</u>	3+ yrs - 4 <u>Step 4</u>	4+ yrs <u>Step 5</u>	5+ yrs <u>Step 6</u>	6+ yrs <u>Step 7</u>
\$16.00/hr	\$17.00/hr	\$18.00/hr	\$19.00/hr	\$20.00/hr	\$21.00/hr	\$22.00/hr

**2008**

\$16.64	\$17.68	18.72	\$19/76	\$20.80	\$21.84	\$22.88
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**2009**

\$17.30	\$18.38	\$19.46	\$20.55	\$21.63	\$22.71	\$23.80
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In support of this position the Union made the following contentions:

1. The Union argued that the City of Paynesville is quite healthy economically and is one of the fastest growing communities in Stearns County. The Union argued that the City has a large fund balance and yet receives substantial Local Government Aid from the State of Minnesota. The Union pointed to many articles in local media that point to the City's healthy financial condition and ability to pay. See Union exhibits 57 through 64.

2. The Union pointed out that while many cities in Minnesota got reduced or even no LGA, Paynesville has received a 60% increase in LGA since 2004. Comparable cities in Stearns County did not receive anywhere near that much.

3. The Union also noted that some 7000 people live in Paynesville and that the Paynesville police department is responsible for patrolling not only the City Paynesville but also Paynesville Township. In addition they are called upon to assist Stearns County Sheriffs when the need arises.

4. The Union also noted that the Paynesville department is much smaller than other departments and much smaller than the average for a town its size in Stearns County. Paynesville employs only 4 full time officers while many cities, even those that are smaller have 4 or even 6 full-time officers and some part-time officers. Thus, the workload of Paynesville officers tends to be far greater than thus of comparable towns within Stearns County.

5. The Union asserted that despite huge surpluses and a clear ability to pay the City has been overly tight fisted with wages for its line employees while its managers and department heads have gotten large increases. The City Administrator received a 20% pay increase recently and will receive 4% increases annually until 2012. Wage disparity like that needs to be rectified in the Union's view. Moreover, as the minutes of various City council meetings show, the council grants very large increases to non-Union people while expecting the Union employees to take very small increases or no increases at all. See Union exhibit 83 – 88. The Union pointed to the City council as being the brick wall in the way of getting a negotiated settlement of this contract.

6. The Union pointed to neighboring cities and argued in support of its wage proposals. The Union data presented showed that the wages for Paynesville officers is far below the average. The Union asserted that the average for the cities the Union used as comparisons was far higher than the wages in Paynesville. The Union used Albany, Cambridge, Cold Spring, Melrose, Sauk Center, St. Joseph and Stearns County as comparison communities for wage comparisons and noted that the average starting salary for patrol officers for this group without Stearns County is \$18.50 per hour. Paynesville is \$13.91. See Union exhibit 95.

7. For top patrol the average without Stearns County is \$23.88 whereas Paynesville is \$20.43. The Union argued that it is no wonder the employees formed a Union when their wages have been artificially held so low by a recalcitrant and combative City Council who has refused to grant them pay increases to bring them within range of the comparison cities in the area.

8. Internally, the Union pointed to the wage increases granted to management employees, as noted above, and to the wage increases granted to department heads. The Chief of Police received a 28.6% pay increase from 2003 through 2007, or an average of 7.15%. The Public Works Director received a 15.15% increase over that same period. The Union argued that these should be used as comparisons for appropriate wage increases.

9. For the other bargaining units within the City the Union pointed to the MAPE contract with the department heads, some of which was noted above, and asserted that the department heads got market increases and changes in pay grades as well as COLA increases of 1% for 2007 and a 2.25% COLA increase for 2008. The Union argued that the net effect was to grant those employees a much larger increase than is being proposed for the police in this matter.

10. The Union also pointed to the Pay Equity study that was completed in 2003 showed that the officers were underpaid by approximately 3.5%. See Union exhibit 115. By January 2008 the City was not in compliance with pay equity and hired a consultant to perform a job study and recommended wage adjustments. The consultant determined that the police officers' pay was under the market using the City's comparison cities, see p. 10 of Employer Tab 10, the Laumeyer and Associates Pay Equity study of August 2008.

11. The Union took issue with the City's assertion that granting the Union's wage proposals would put the City out of compliance with Pay Equity and argued that all the City would have to do to put themselves back into compliance is to pay the AFSCME general unit the same COLA's awarded by the arbitrator here. The Union argued that even if granting this group (a male dominated group) its proposed wage increases were to put the City out of compliance with Pay Equity, the City could simply pay the other groups more and rectify the situation.

12. The essence of the Union's case is that the City simply needs to face up to the reality of the problem that its wages for police officers is far too low and that their attitude here is what causes that problem. Since the City was not willing to face up to its responsibility to pay its officers appropriately here it is up to the arbitrator to award the Union's [proposed increases to send that message to the City and start the contract of on the right footing here.

#### **CITY'S POSITION**

The City's position was to freeze the start rate and all rates through step 6 of the pay scale and to increase Step 7 by 1% for 2007. For 2008 the City proposes to increase only Step 7 again by 2.25% and for 2009 the City proposes to increase the Step 7 amount by 2.5%. All adjustments would be effective the beginning of the first full pay period of January of the applicable year. In support of this position the City made the following contentions:

1. The City's first and main argument is that granting the wage increases proposed by the Union would take the City out of Pay Equity compliance. The City argued that Minn. Stat 471.993 requires that Pay Equity must be the arbitrator's main focus and that any decision that is in conflict with or causes a penalty to be incurred by a City has no force and effect and must be returned to the arbitrator to make it consistent with Pay Equity. The City also pointed out that such an award would be in conflict with PELRA, at 179A.16, subd. 5.

2. The City argued that if the Union's top patrol rate of \$22.88 is used, it would mean that the City no longer meets the alternative analysis test and would therefore be out of compliance with Pay Equity. Further, awarding the remainder of the Union's increases would immediately take the City out of Pay Equity compliance. The City argued that in contrast, the 1%, 2.25% and 2.5% increases in 2007, 2008 and 2009 respectively would keep the City in compliance. The City argued that on this basis alone the arbitrator is constrained to award the City's position. Further, the arbitrator does not have jurisdiction as the Union seems to suggest, to simply require the City to pay other groups more in order to meet Pay Equity requirements. The arbitrator simply cannot make any award that takes the City out of compliance, whether it would be "easy" to fix or not.

3. Internally, the City pointed to other voluntarily negotiated settlements in support of its position. The City argued that this is particularly true where a male dominated group's pay at 2006 rates is already above the predicted 2008 pay for that group. The City asserted that this group should not be allowed to "race away" from other predicted pay in the City's Pay Equity report. See Laumeier and Associates Pay Equity study dated August 2008.

4. The MAPE Union agreed to a 1% increase for 2007 and a 2.25% increase for 2008 for its members, just as the City is proposing here for those years. The City pointed out that internal consistency is a major factor to be considered in interest arbitration and that there is no compelling reason presented to deviate from what at least one other unit has agreed to in voluntary negotiations. The issue is to determine what the parties would have agreed to had they been able to negotiate a settlement on their own. Here the strongest evidence of that is what the MAPE group has already agreed to.

5. The City further argued that while the City Administrator's pay was increased by 4% she is not eligible for step increases as these employees are so it is not a fair comparison to simply take the 4% without knowing the full picture of her compensation package.

6. Externally, the City first argued that it should be used only as a check to make sure the City's practices are not significantly out of line with what other jurisdictions are doing but should not be the main factor used. Some jurisdictions have very different practices and theories of compensation. Some for example may decide to "front load" or "back load" their pay structure in a multi-year contract depending on what was negotiated such that precise measurements cannot always be made. Simply comparing what one jurisdiction does with another may result in a skewed view of the external market and can create more problems than it resolves.

7. The City urged a more general view of external comparisons over time in order to know what that market really is. Moreover, market position is also an inexact measure of compensation and external comparisons should not be used to improve or alter market position with respect to where one group falls as compared to other similarly situated employees in other jurisdictions.

8. The City used a very broad base of jurisdictions that were comparable in size and geographically diverse to get a broader view of what cities of the same general size are paying. Using those cities, the City argued that Paynesville is at about 95% of the population for comparably sized communities yet is at about 98% of the top salary. The City further argued that simply comparing a few cities in a very small geographic area does not give one the best perspective since police officers are so mobile and can move from one jurisdiction to another easily.

9. Finally, while the City acknowledged that it has the ability to pay what the Union is asking for it asserts that this is not the question. Rather the question is whether it is reasonable that it pay what they are asking. Further, while the City is relatively healthy financially that is in large measure due to the fiscally responsible management of the City by the Council and the management team. Further, the future financial picture is somewhat bleak as most who watch the economy know and that the housing market, which forms the basis for property taxes, is perhaps the hardest hit. This fact should not be taken lightly by the arbitrator who should therefore be cognizant of what the likely future prospect holds for small communities in Minnesota like Paynesville.

## DISCUSSION OF WAGES FOR 2007, 2008 & 2009

It was apparent at the hearing why the parties were unable to agree on a wage package for this employee group. Their respective positions were quite divergent as were the assumptions used by each as the basis for their respective positions.

The Union argued that the arbitrator should look to the large increases given by the City Council to the administrator and the Police Chief and to use those increases as the basis for the wage increases granted here. While such things are the stuff of a media expose, such comparisons do not drive the discussion here. The question is more appropriately geared to what the other groups have agreed to in the same jurisdiction.

Here there was some divergence as well. the MAPE group has agreed to the City's COLA proposals for 2007 and 2008 as noted above and agreed to a 1% increase in 2007 and a 2.25% increase for 2008. That group also has a 7-step wage schedule providing for increases at various levels. This group has a 7-step wage schedule as well and currently all officers are at the top step, Step 7.

The wages for 2006 were as follows:

Start	\$28,937.65	(\$13.91/hr)
Step 2	\$31,196.91	(\$15.00/hr)
Step 3	\$33,456.17	(\$16.08/hr)
Step 4 Midpoint	\$35,715.45	(\$17.17/hr)
Step 5	\$37,974.70	(\$18.26/hr)
Step 6	\$40,233.95	(\$19.34/hr)
Step 7	\$42,493.19	(\$20.43/hr)

The Union proposes to raise the starting pay to \$16.00 and to increase all steps from the 2006 amount as set forth in its position above. The rationale for this was essentially that the City has simply been too stingy over time and that they have artificially set police officer wages too low while at the same time increasing management salaries by very large percentages. The Union further seeks a COLA increase over the proposed starting pay of 4%. The rationale for this is that this is what the City Administrator was granted recently by the Council.

The City refuted this by arguing that the Administrator does not receive step increases as the officers do and that there is an approximately 7% increase between steps. (The arbitrator calculated these at something just under 6% but the City's point on step increases was well taken.)

The Union pointed to external comparisons for small cities in and around Stearns County as appropriate comparisons. The Union argued that these cities average much higher pay for their officers and that Paynesville is by far at the bottom of starting pay for these cities as well as top patrol pay. See Union exhibits 95 and 96. The City pointed to a broader set of comparables and argued that Paynesville is at 85% of the average starting pay and 98% of top patrol pay. See City exhibit 11.

Externally, the Union's point was more than well taken based on the data presented. Even using the figures from the City it is apparent that Paynesville officers are vastly underpaid and are at the very bottom of the starting pay list of external comparables used by the City. See City exhibit 11. For top patrol the picture was somewhat different in that Paynesville pay was at about 98% of the average and did exceed several of the comparison jurisdictions. If one uses the Union's external comparison jurisdictions Paynesville is last in both starting pay and top patrol pay by a wide margin.

There is thus little question that, using an external market analysis, the Paynesville officers are significantly underpaid and that, as the Union suggests, is at least one likely reason they organized. External market comparisons are not the sole factors to be used however in determining the appropriate wage award. Internal comparisons must also be used as well as Pay Equity factors.

Internally the only other Union to voluntarily agree to a settlement was MAPE. Those employees agreed to a wage increase of 1% for 2007 and a 2.25% increase for 2008. This was also however after several of the classifications were moved into higher step, see MAPE contract at page Article 14.1, page 13. The City argued that the same pay increases granted in the MAPE contract should be awarded here in order to maintain internal equity. The Union pointed to the 4% increases granted to several of the management employees in support of its assertion that a 4% increase over each of the three years of the contract would be appropriate.

The most difficult and thorny issue on this record pertained to pay Equity. It is exceedingly rare that an interest arbitrator runs into the assertion that granting a particular wage increase proposed by a party will actually take the jurisdiction out of compliance with Pay Equity. Most of the time the assertion is that granting the increase sought by one or the other party will not take the jurisdiction out of compliance and that it would thus not be inappropriate to grant that request. The City asserted that granting the Union's request would take the City out of compliance because it would result in police officer salary greater than that of the bookkeeper and liquor store manager, both female dominated classes. This results in 78% of the female jobs having a compensation disadvantage compared to the male classifications and would take the City out of compliance using the alternative basis test for Pay Equity compliance. The City further argued that granting a 1% increase in 2007 would take the maximum pay for police officers above that of bookkeeper but would not pass the Liquor Store manager and would thus keep the City in compliance. The Union argued that this can easily be rectified by paying the female classes the same wage adjustments awarded by the arbitrator here.

Neither analysis was completely compelling. In response to the Union's claim that the City can rectify any pay equity lack of compliance by simply adjusting the COLA's for female dominated classes, it is clear that the arbitrator does not have jurisdiction to require that. The statutes are clear and prevent an award from being implemented if it results in non-compliance with the Local Government Pay Equity Act. The arbitrator simply cannot award something that would take the City out of compliance even if such non-compliance can be rectified later.

The arbitrator struggled mightily with this. The Union's point that the officers are underpaid was supported by considerable evidence, especially external data. Even internally however there was some evidence to suggest that the officers are underpaid. Granting the sorts of increases to management employees over time as have been granted here makes it exceedingly difficult for a public employer to argue with a straight face that these sorts of increases should not be awarded to the line employees.

Moreover, a close review of the MAPE contract reveals that while the COLA increases proposed by the City were agreed to, it was apparently after many of the affected employees were moved up on the pay scale and thus were granted significantly higher salaries over their 26 wage rates. (It was also apparent that the MAPE and City of Paynesville contract found in the parties' booklets was also that units' first contract as well. The evidence thus supported granting an increase above and beyond the City's proposals.

The difficulty here, as noted above, was to assure that the City would still be in compliance with Pay Equity after the award. Every effort was made to find a reasonable award that was consistent with internal considerations and external market factors but which keeps the City in compliance.

Based on the evidence in this matter it is apparent that some blending of the parties' positions is appropriate. Certainly, the Union's entire position cannot be adopted because the City provided convincing evidence that adopting the whole package proposed by the Union would take the City out of Pay Equity compliance. Certainly also, a comparison of both internal and external factors shows that the officers are significantly underpaid and that their salaries should be increased commensurate with their work. PELRA does not constrain an interest arbitrator to simply selecting one or the other of each party's position and allows some discretion to select pieces of their respective positions in order to craft a reasonable solution to impasse cases. This does not of course grant to the arbitrator the power to make things up and every award should have some rational basis in the notion that the award should attempt to reflect what the parties would have negotiated for themselves.

As the City argued, internal comparisons to what other units have already agreed to can be a very significant factor in determining what these parties would have negotiated for themselves. In this regard a review of the MAPE contract was very helpful.

The wage section of the MAPE contract covering several City employees, including the Police Chief, provides that the 2007 amounts were arrived at as follows: "The Police Chief was elevated from grade 12 to grade 14 on the City's step and grade chart; the Public Works Director was elevated from grade 13 to Grade 14 on the City's compensation plan and the Account Clerk/Payroll Clerk/Safety Director was elevated from Grade 6 to Grade 7 on the City's step and grade chart. The 2008 amounts were arrived at by increasing the 2007 compensation by two and one-quarter percent (2.25%)."

It was thus apparent that in most cases the affected MAPE employees received an increase in pay to essentially start the 2007 wage structure and then received 2.25% increases for 2008.

Internal consistency would support following a similar plan for the police officers but with the caveat that the compensation plan cannot place the City in to non-compliance with Pay Equity. The Police Officers, as noted above, should be paid more based on internal and external market considerations. Some additional increase would also be appropriate based on the salary separation as between the line officers and the Chief of Police. The Chief's salary was increased by 2 pay grades to \$56,944.97 in 2007; up from grade 12, or \$51,650.73 in 2006. See Union exhibit 7 showing the 2006 pay grades for the City of Paynesville. In 2006 the officers at step 7 of the patrol salary schedule were paid \$20.43/hr or \$42,494.40/year. In 2006 there was a salary separation between top patrol pay and the Chief of \$9,156.33, or an approximately 17.7% difference. To maintain this separation the Chief's salary in 2007 would need to be \$10,079.26 higher than the top patrol salary. That would require an increase in the top patrol rate to \$46,865.71, or \$22.53/hr. That of course is higher than what the Union is seeking and it would take the City out of compliance with Pay Equity and cannot be awarded.

Using the same rationale that the parties used in the MAPE contract by increasing the officers by an equivalent of a pay step would provide a rational result. The percentage difference between step 6 and step 7, top patrol on the patrol salary steps is approximately 5.3%. Using the MAPE model the 2007 salary must be adjusted upward by that same percentage and used as the starting point for the 2007 wage schedule.

Moreover, the City provided no compelling reason why the entire schedule should not be adjusted upward by that entire amount. There was no claim that increasing the starting pay through Step 6 would take the City out of compliance with Pay Equity. Moreover the Union did provide a compelling reason based on internal and external factors that the salary schedule should be adjusted upward. Here the most reasonable increase based on the evidence as a whole is to increase the 2006 patrol schedule by 5.3% as the baseline for the 2007 wages. Applying that percentage to the salary schedule results in the following pay structure.

**2007**

0 -1 yr	1 yr+ - 2 yrs	2+ -3 yrs	3+ yrs - 4	4+ yrs	5+ yrs	6+ yrs
<u>Step 1:</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
\$14.65/hr	\$15.80/hr	\$16.93/hr	\$18.08/hr	\$19.23/hr	\$20.36	\$21.51/hr

In making this award the arbitrator was quite cognizant of the requirements of Pay Equity and the need to assure that this award does not take the City out of compliance. The City raised the very legitimate concern that the Union's request for \$22.00 per hour at Step 7 would result in a salary higher than the Liquor Store Manager, covered by the MAPE contract and would therefore result in non-compliance with Pay Equity. Applying the above figures to the analysis, the annual salary for the top patrol would be under the Liquor Store Manager's pay for 2007. The top patrol annual salary for 2007 under this award would be \$44,740.80, or \$3,728.40 per month. The Liquor Store manager's salary under the terms of the MAPE contract is \$47,317.25, or \$3,943.10 per month.

Thus while this award appears to take the police officers above the Bookkeeper salary it keeps it under that of the Liquor Store manager and thus keep the City in compliance with Pay Equity. The arbitrator, like apparently the Union's counsel had difficulty running the DOER software and was not able to run these figures to assure compliance.

Having said that and having made it clear that the intent of this award is not to take the City out of compliance, if the parties feel that this award does take the City out of compliance the arbitrator will retain jurisdiction to consider the limited issue of whether the award results in non-compliance and the parties can submit evidence regarding that issue.

The next question is thus what percentages to apply to 2008 and 2009 for increases in this salary. Here the City's arguments on internal consistency were persuasive. The City proposed a 2.25% increase for 2008 and a 2.5% increase for 2009. The Union did not provide compelling evidence of the need or the rational for why a 4% increase should be granted. Moreover, these are consistent with what the MAPE unit agreed to and is again likely what the parties would likely have negotiated. Accordingly, the City's position for increases of 2.25% in 2008 and 2.5% in 2009 is awarded.

**AWARD ON WAGES FOR 2008-2009**

The 2007 salary schedule is awarded as described above as follows:

**2007**

0 -1 yr	1 yr+ - 2 yrs	2+ -3 yrs	3+ yrs - 4	4+ yrs	5+ yrs	6+ yrs
<u>Step 1:</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
\$14.65/hr	\$15.80/hr	\$16.93/hr	\$18.08/hr	\$19.23/hr	\$20.36	\$21.51/hr

The City's position is awarded for increases in 2008 and 2009, i.e. 2.25% for 2008 and 2.5% in 2009.

## **EMPLOYER AUTHORITY – MANAGEMENT AUTHORITY – ARTICLE 4.2**

The parties have a tentative agreement on part of the management authority Article but there remains an issue on language proposed by the City. The parties have agreed to the language as follows:

### **4.2 Management Authority**

Except as limited by the specific provisions of this Agreement, the employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the Employer in all of its various aspects, as set forth in the Minnesota Public Employee Labor Relations Act, (P.E.L.R.A.) of 1971, as amended.

The parties disagree on the following language, which was proposed by the City: Nothing in this agreement shall limit the City's management right to discontinue functions, utilize technology, restructure, consolidate, subcontract and take other actions that may result in the elimination of a bargaining unit position or positions.

### **CITY'S POSITION**

The City made the following contentions in support of its position in favor of inclusion of the disputed language:

1. The City argued that internal equity and consistency mandates the inclusion of the language in the second sentence of proposed Article 4.2 as set forth above. The AFSCME Union also has a tentative agreement and while not settled as of the date of the hearing in this matter, does contain the very same language proposed by the City in this case.

2. Moreover, the MAPE contract is settled and contains very similar language in Article 4.4 of that agreement. That language provides that the City has the right to utilize technology, restructure, consolidate, subcontract and take other actions that may result in the elimination of a bargaining unit position or positions, just as the proposed language does here. It is in every material way identical and should be adopted by the arbitrator.

### **UNION'S POSITION**

The Union raised the following contentions in support of its position that the language should be excluded:

1. The Union argued that the language proposed by the City is already contained in PELRA and is therefore duplicative and superfluous. PELRA already grants to the employer the very rights the language would confer and to the extent there would be anything above that inferred in this language it should be for the parties to negotiate rather than be imposed by an arbitrator.

2. The Union also noted that the AFSCME City hall employees' contract is in fact not yet settled and that they may well be waiting to see what happens here before agreeing to this language. It is axiomatic in labor relations that there is no agreement on anything until there agreement on everything so there is no force and effect to a "tentative agreement" here. Moreover, the MAPE contract contains slightly different language and cannot be used on an internal consistency argument.

3. The Union argued that since this is a first contract even more caution should be used before inserting language into an agreement without a compelling showing of need by the party proposing it. This should be left to the parties for negotiation.

#### **DISCUSSION OF MANAGEMENT RIGHTS – ARTICLE 4.2**

PELRA provides in relevant part as follows:

**179A.07 RIGHTS AND OBLIGATIONS OF EMPLOYERS.** Subd. 1. **Inherent managerial policy.** A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel.

The City argued that internal consistency requires the inclusion of this language since the AFSCME unit has tentatively agreed to it. This is a more difficult issue than it appears however. Certainly the parties could agree to that but here the arbitrator is being asked to impose such language in the face of one party not agreeing to it. While there is a tentative agreement between the AFSCME City hall group and the City on language that appears to be almost the same, it is a tentative agreement only. The Union raised the issue that the City Hall group may well be waiting to see what happens here.

However, the MAPE agreement contains virtually identical language to that proposed by the City. The only substantive difference is the recitation that the parties “agree” to the language as opposed to the language providing that “nothing in this Agreement shall limit” the City’s right to perform the various recited functions. Other than that the language appears to have the same force and effect.

The question is, as always, what would the parties have agreed to in the absence of interest arbitration? This case presents something of a mixed bag on that as noted above. The City correctly points out that an interest arbitrator should be reluctant to add language to a contract without a showing of a compelling need for it. There was no showing that there has been some pressing issue that needs to be addressed; indeed there almost could not be since this is a first contract. However, the question here is what the parties would likely have negotiated and on this record the MAPE contract is perhaps the best, and only, measure of that. There is also a strong policy in favor of internal consistency with respect to language issues like this.

On balance, the language proposed by the City does not appear to grant to the City anything beyond what PELRA already does and while it may be somewhat redundant to place it in the contract, it is already there on the MAPE contract. Thus, because the language does not appear to grant anything more than what PELRA already confers to the City and on an internal consistency theory, the City’s position on this will be awarded.

**AWARD ON MANAGEMENT AUTHORITY – ARTICLE 4.2**

The City’s position is awarded.

**EMPLOYER AUTHORITY – POSITION ELIMINATION ARTICLE 4.3**

**CITY’S POSITION**

The City proposed the following language at Article 4.3:

The Employer shall advise the Union in writing at least sixty (60) days before taking any action that may result in the loss of a bargaining unit position. This sixty day notice requirement will not apply where there is an emergency need to eliminate the position and the employer provides written notice to the Union as soon as practical. The employer shall include any information related to cost savings and consumer impact in its possession or that it may be reasonably be able to obtain that may be requested by the Union. Within thirty (30) days of providing such advice, the employer and the Union shall meet and discuss in good faith the effects of the City's decision including possible alternatives."

In support of this position the City made the following contentions:

1. The City raised essentially the same arguments as those raised with regard to the language proposed at Article 4.2. This was based on internal equity and consistency. The City noted that the AFSCME City hall employee contract, which has been tentatively agreed to, contains the identical language to that proposed by the City here.

2. Moreover, the MAPE contract contains something very similar and provides at Article 4.4 that "in the event the City determines to take an action that will result in the expected permanent loss of a bargaining unit position, the parties agree to meet and negotiate in good faith upon the request of the Association over the effects of the management decision." This language is in substance almost the same as proposed here.

#### **UNION'S POSITION**

The Union opposed the addition of this language. In support of that position the Union raised the following contentions:

1. The Union's main concern is that the City not be able to eliminate a police officer position or to subcontract out all or part of it without having to negotiate that subject. The police officers are gravely concerned that with the City's attitude toward wages as set forth above, the City could well simply decide to take a rash action to either subcontract out the department or to go with all part-time officers. In either case, the effects would be devastating to the officers and the Union has the right to negotiate the effects of that change.

2. The Union pointed to the MAPE contract for guidance and argued that the language should either be denied or the arbitrator should award the same language in the MAPE contract. The City's proposed language here simply requires a very short 60-day notice and to *meet and discuss* the subject, while the MAPE contract requires the parties to *meet and negotiate* the subject. The Union argues that at the very least the parties should be required to negotiate in good faith over any position to be eliminated.

#### **DISCUSSION OF POSITION ELIMINATION – ARTICLE 4.3**

The Union's points on this issue were well taken. The proposed language is not in fact the same as what is found in the MAPE contract. To the contrary, a requirement to meet and discuss is very different from one requiring the parties to meet and negotiate. Moreover, while there is again a "tentative" agreement with the City hall unit, that is not settled and is not the best measure to be used here. The MAPE contract is settled and contains language requiring that the parties meet and negotiate the effects of a management decision to eliminate a bargaining unit position. Based again on internal consistency with the contract that has been already negotiated, that language is awarded.

#### **AWARD ON POSITION ELIMINATION – ARTICLE 4.3**

The language of Article 4.3 shall read as follows:

Article 4.3 – Elimination of Position - In the event the City determines to take an action that will result in the expected permanent loss of a bargaining unit position, the parties shall meet and negotiate in good faith upon the request of the Union over the effects of the management decision.

#### **HOURS OF WORK – NORMAL WORK SCHEDULE – ARTICLE 7.2**

##### **UNION'S POSITION**

The Union is seeking to include language at Article 7.2 as follows:

"Normal Work Schedule. The standard workweek shall be forty (40) hours, Monday through Sunday. The standard workday shall be eight (8) hours in length. To the extent practicable, Employees shall receive two consecutive days off per week."

In support of this position the Union made the following arguments:

1. The Union was adamantly opposed to any language that would give the City the right to schedule the officers that does not provide for two consecutive days off.

2. The Union is also quite opposed to anything that would allow the City to schedule the officers for a night shift and then a day shift and then back again as this would be very disruptive to their lives and possibly to their health.

3. The Union pointed to the provisions of the agreement between LELS and Stearns County at Article 14, which provides for either an 8 or a 10-hour day and provides a definition of a normal workweek. While the Union is not seeking identical provisions, the Union did argue that it is usual and customary for there to be a defined work week so the employees know their schedule and for purposes of defining overtime. The City's position does not protect the employees at all in either of these regards. There is no similar provision in the MAPE contract as one might expect. Since police departments are a 24-7 operation, officers are treated very differently for overtime and work schedule purposes. The best measure is thus either an external market factor or what the current personnel policy provides at page 10, i.e. that the standard workweek is comprised of seven consecutive days consisting of 168 hours (Monday through Sunday). The City has operated for years under this provision and the Union simply seeks to memorialize it in the labor agreement now. The Union asserted that if at some future time the need arises to change it the parties can always negotiate those changes when and if the need arises.

#### **CITY'S POSITION**

The City's position is to include language as follows:

"The normal work schedule for full time employees will recycle in no more than 28 days of no more than 171 hours." In support of this position the City made the following arguments:

1. The City argued that the ability and need for flexibility in scheduling is at the very heart of what management rights are. Commentators from Elkouri to several prominent arbitrators in and around Minnesota have long recognized that the right to direct the workforce includes the ability to schedule the employees as the employer sees fit to meet the needs of the department.

2. The right to schedule the workforce is particularly acute in the area of law enforcement where scheduling has a direct and vital link to public safety. The Union's language could potentially adversely affect this right and could create more costs to the department by having to pay overtime or limit the right to schedule people if there are arbitrary requirements on scheduling.

3. At no point has the City negotiated this right away or limited it in any way. Given that this is a first contract, the City argued, the arbitrator should be very wary of giving away a right that the City clearly has under PELRA without a showing of compelling need or a quid pro quo by the Union. None was presented here and the arbitrator should not assume one.

4. The City raised the prospect that no language should be awarded at all since this is a first contract. The City cited to prior awards advising caution and restraint when introducing basic contractual changes into the labor agreement that could place the parties' relationship at risk. The City asserted that the parties have operated for years with 8-hour shifts and that the Chief has been quite adept at scheduling his officers on that basis. The City does not wish to see this limited however and as an alternative, asks that the arbitrator simply demur on this question and send the parties back to negotiate something for themselves if there is a need for that.

#### **DISCUSSION OF WORK SCHEDULE – ARTICLE 7.2**

This issue is closely tied to the overtime issue, to be discussed next and were considered together. It is also tied to the management rights clause discussed above as well.

The City argued that the definition of the workweek is within the inherent management right to schedule and direct the work force and that nothing should interfere with that right. The City is correct that the right to schedule the work force is generally considered a management right. Moreover, the management rights language awarded above grants this right to the City.

The issue here however is whether there should be a definition of the workweek. The City claims that awarding the language the Union seeks will somehow limit the right of the employer to schedule the employees. A close reading of the Union's language reveals that that will not in any way limit the right of the Chief to schedule the employees. That is reserved under the management Rights clause. The real unspoken issue here is whether scheduling the officers in some way, that has apparently not happened much to date, will cost the City more.

There is no bargaining history upon which the arbitrator could rely. There are no other law enforcement units within the City that provide any guidance either. The City Hall unit contract is of very little help in this regard because they involve such different types of employees. Moreover, external comparisons on items like this are of little value given the differing nature of law enforcement operations. This is particularly true when attempting to compare county sheriff's departments with city police departments.

The MAPE contract again provides some help even though it too involves very different sets of employees, even though it does include the Chief of Police. It provides for a normal work week of 40 hours for non-exempt employees and further provides for overtime for all hours worked in excess of 40 hours in a seven day period. See Articles 7 and 8 of the MAPE contract.

The question of what these parties would have negotiated for themselves becomes very difficult to determine on a record such as this. The evidence showed that the current scheduling system is working well and that there are no actual issues regarding how the officers are scheduled. If this were anything other than a first contract it would be difficult at best to say that there is a compelling need for a change from current practice or the current language of the personnel rules.

The City cited the prior award in LELS and City of Winona where this arbitrator recognized that the right to schedule is an "inherent part of the right to select and direct the workforce." True enough but there the question dealt squarely with the right to schedule the employees and did not deal with the question of the normal workweek or the question of overtime. Those are separate questions.

The arbitrator was cognizant of the Union's concerns about potential future difficulties or the potential for doubleback shifts, as they are sometimes referred to, but there was no evidence that this was an issue that needs to be addressed now. Under these circumstances and based on the very cogent pronouncements of arbitrators such as Mario Bognanno regarding the necessary caution to be exercised by arbitrators lest they place things in the contract that may have unintended consequences later, no award of language will be made on this question.

On the other hand, PELRA admonishes interest arbitrators to decide the issues certified by BMS. The statute expects that we will do the best we can in the face of sometimes conflicting evidence and argument and uncertainties of future results of language awarded. We do the best we can with the hand we are dealt. Interest arbitrators must therefore be thoughtful and cautious and cognizant of the needs of both parties but they must make a decision. Doing nothing as the City suggested as an alternative resolves nothing and virtually guarantees that this issue will arise again until it is resolved by somebody.

Here, once again, some combination of the parties' language appears to be appropriate and consistent with the current practice and the needs of the parties. Based on the evidence as a whole, including the current language of the personnel rules, which seem to have served the parties well until now, the needs of the department, the management rights language already awarded and the arguments of the parties it is determined that the language of article 7.2 will read as follows: "The standard work week shall be comprised of seven consecutive days consisting of 168 hours (Monday through Sunday)."

This is taken in large measure from the City's current personnel rules, which appear to be working at this point. It does not include a provision that defines a standard workday, as there currently appears to be no great difficulty with this. Further it does not contain any requirement that the employees receive two consecutive days off. There was no evidence this was a problem either and there appears to be no provision calling for premium time for such shifts and the arbitrator has no jurisdiction whatsoever to simply create one. Finally, this grants the same flexibility to the Chief that he has now in terms of scheduling while at the same time providing the basis for a definition of overtime, to be discussed below.

#### **AWARD ON WORK SCHEDULE - ARTICLE 7.2**

The language of Article 7.2 is awarded as follows:

"The standard work week shall be comprised of seven consecutive days consisting of 168 hours (Monday through Sunday)."

#### **OVERTIME -- CALCULATION OF OVERTIME AND PREMIUM PAY -- ARTICLE 8**

##### **CITY'S POSITION**

The City proposed the following language for overtime pay:

##### **8.1 Overtime Calculation**

Employees will receive overtime compensation for all hours worked in excess of 171 in a 28-day cycle. When determining hours worked for a particular week, all compensated hours during that week shall be compensated as time worked.

In support of this position the City made the following contentions:

1. The City noted that internal comparisons are of limited value since the other employees have different coverage requirements in their jobs. The City hall employees and MAPE unit contracts do not easily apply to police officer/patrol groups.

2. The City noted that while there may be some temptation to use the overtime provisions for the Police Chief covered by the MAPE contract even this does not truly apply since the Chief is exempt under the FLSA.

3. The City acknowledged that the current personnel policies call for overtime to be paid after 40 hours in a workweek but argued that this would not apply if the schedule were to be changed to a schedule where 40 hours in a workweek did not “fit” such as a 6 – 3 schedule. In that case there would be some weeks in which the officers would work 48 hours.

4. The City once again argued that the arbitrator should refrain from introducing basic contractual changes into the agreement and argued that the easiest and most cost neutral way to deal with this is to simply adopt the FLSA standard. Under Section 207(k) of the FLSA police officers are treated differently from other workers. The FLSA allows police officers to be scheduled 171 hours in a 28-day period without the obligation to pay overtime. The essence of the City’s claim is that in order to preserve the parties’ relative positions, the arbitrator should simply adopt the FLSA standard and let the parties negotiate from there.

## **UNION’S POSITION**

The Union proposed the following language for overtime:

### **8.1 Overtime calculation**

Employees will receive overtime compensation – time and one half the employees base rate of pay- for all hours worked in excess of the standard hours of work (8 hours per day/40 hours per 7 day work week).”

In support of this the Union made the following arguments:

1. The Union pointed out that officers in a small department can have life disrupted a lot by frequent call outs and overtime work. The Union argued that overtime should be required each and every time it happens, i.e. whenever an officer’s life is disrupted by having to interrupt their personal life to assist another officer or deal with some sort of emergency. Such interruptions are not properly compensated when a department uses a 171-hour in a 28-day cycle to calculate overtime.

2. Internally, the Union pointed to the MAPE contract, covering the Chief and noted that in that contract overtime is paid for hours in excess of 40 per week. Moreover, the City’s personnel policies, which have been in operation for years, also provides for overtime for hours in excess of 40 per week.

3. The Union also pointed to the Stearns County Sheriffs' contract with LELS and noted that overtime is paid for all hours worked in excess of the normal workday or normal workweek. They also have a definition of normal workday and work week set forth in their contract so it is clear how and under what circumstances overtime is due. The Union argues that simply using the FLSA formula does not properly compensate the officers for the inconvenience to their lives in having to be called out or work overtime hours. Further the City is asking for a change that should be negotiated between the parties since it reflects something very different from what the City and the employees have used in the past. The arbitrator should thus be cautious about radically changing an existing relationship here.

### **DISCUSSION OF OVERTIME**

The practice and policy for overtime prior to the bargaining relationship being established here was done pursuant to the City's personnel policies. As noted, Section 8 of that policy provides for overtime for any hours worked over 40 in a workweek. There was no evidence that this has created a problem for either the department or the officers and no evidence of how much overtime the department has actually paid over the course of the past few years. Certainly, once a Union is certified as the exclusive bargaining representative, the relationship changes dramatically as between the parties and whole set of statutory and contractual obligations arises where perhaps none had existed before.

Here however the issue is the appropriate language to be awarded for overtime. It is also clear that this is a first contract so the arbitrator must be cautious about introducing something into the mix that would radically alter the existing relationship with respect to a benefit that has apparently been provided without difficulty for a number of years. Simply because there is now a certified exclusive bargaining representative does not necessarily always require that everything that has existed before must now change.

The City argued that it would be easier to adopt the overtime requirements under Section 207(k) and require overtime only for more than 171 hours worked in a 28 day cycle. There is nothing in the law that requires that and no compelling reason given for why that should be imposed now.

The City is correct though in noting that internally it is difficult to find a truly analogous provision. The nature of police work; their 24-7 schedule and their somewhat different status under the FLSA does in fact render them "different" for purposes of overtime. However, even though the Chief is an exempt employee, the MAPE contract adopts in large part what the personnel policy provided in overtime and requires overtime for hours worked in excess of 40 hours in a workweek.

As always, the question is what would the parties have likely negotiated for themselves here in the absence of interest arbitration? That is never an exact science but here at least the City and the MAPE unit used the 40 hours in a workweek standard.

The City is also correct in that arbitrators should refrain from changing the parties' relationship absent a showing of compelling need or a quid pro quo. That is especially true on a first contract. Here though that admonition cuts against introducing an overtime concept into the parties' existing relationship that has not existed and for which there was no showing of a compelling need to change.

Interest arbitration certainly exists as an option but PELRA demonstrates a clear preference for voluntary negotiation and resolution of labor contracts. Here, on balance, the most appropriate award using those factors listed above is to use what the parties have used in the past without apparent difficulty and require payment of overtime for hours worked in excess of 40 hours in a workweek.

The notion of granting overtime for hours worked in excess of 8 in a day was considered but that would have entailed the creation of a benefit that has not apparently existed before. Any change in this should be left to the parties to negotiate in future bargaining. Accordingly, the language awarded for overtime is as follows: "Article 8.1 – Overtime Calculation - Employees will receive overtime compensation – time and one half the employee's base rate of pay- for all hours worked in excess forty (40) hours in a workweek."

## **AWARD ON OVERTIME - ARTICLE 8**

Article 8.1 – Overtime Calculation - Employees will receive overtime compensation – time and one half the employees base rate of pay - for all hours worked in excess forty (40) hours in a workweek.

## **RETIREE HEALTH INSURANCE – ARTICLE 17**

### **CITY'S POSITION**

The City seeks the following language in the agreement:

Article 17 A. Full time regular employees hired prior to January 1, 2000 will be eligible for the following retiree health insurance program.

1. In order to be eligible, the full time regular employee must have fifteen (15) years of service at the time of retirement and must be legally qualified to draw a pension under PERA. In order to be eligible, the employee must also sign a retirement agreement with the City and provide at least two (2) month advance notice of retirement.

2. An eligible individual will receive one year of single health insurance coverage for every ten (10) years of service with the City. The benefit is based on full ten (10) year increments and is not prorated (for example, an individual with seventeen years of service would qualify for one year of single health insurance).

3. The benefit would cease upon the earliest occurrence of any of the following events:

- a. The employee reaches age 65
- b. The benefit is exhausted
- c. The employee dies

4. The City will pay up to a maximum of four hundred fifty (\$450.00) per month for insurance, which represents seventy five percent (75%) of the current City coverage. The City will make this payment, in its discretion, either directly to the insurer through a voucher upon receipt of a statement or to the employee upon receiving an itemized receipt.

B. Employees with dates of employment prior to January 1, 2007 who do not qualify pursuant to Section 12.7(A) will be eligible for the following retiree health insurance program.

1. In order to be eligible, the full time regular employee must have fifteen (15) years of service at the time of retirement and must be legally qualified to draw a pension under PERA. In order to be eligible, the employee must also sign a retirement agreement with the City and provide at least two (2) month advance notice of retirement.

2. An eligible individual will receive six months of single health insurance coverage

3. The benefit would cease upon the earliest occurrence of any of the following events:

- a. The employee reaches age 65
- b. The benefit is exhausted
- c. The employee dies

4. The City will pay up to a maximum of four hundred fifty (\$450.) per month for insurance, which represents seventy five percent (75%) of the current City coverage. The City will make this payment, in its discretion, either directly to the insurer through a voucher upon receipt of a statement or to the employee upon receiving an itemized receipt.

C. Employees with dates of employment on or after January 1, 2007 are not eligible for a retiree health insurance benefit.

In support of this position the City made the following arguments:

1. The City pointed to the need to make certain disclosures for purposes of financial auditing and reporting pursuant to Government Accounting Standards Board Rule 45. The City argued that the change in Rule 45 provides an incentive for the City to refrain from creating any new benefits.

2. The City cited prior arbitration decisions that mitigate against the creation of new benefits, especially retiree health insurance benefits, by interest arbitrators. Over the last several years, the focus has been on what to do with existing health insurance schemes and not to add new ones. Benefits conferred on employees should entail some concession or negotiated benefit.

3. The City argued that no quid pro quo has been offered by the Union for this benefit. Moreover, there are few external comparisons since few other jurisdictions offer this benefit. However, even the Stearns County and LELS contract, relied upon by the Union for other propositions herein, provides for a sunset of retiree health insurance benefits in 2010.

4. Internally, the City pointed out that MAPE employees agreed to the language proposed by the City. The City argued that for many years there has been a strong policy in favor of internal consistency with respect to fringe benefits of this nature. That policy and consistent set of arbitral holdings by this and many other arbitrators dictates that the City's proposed language be awarded.

5. The City offered the alternative of no award at all in the event the arbitrator determines that no award of benefits under these circumstances is appropriate.

## UNION'S POSITION

The Union seeks no change from the existing policy of providing retiree health insurance although it did not propose specific language for what should be in the contract itself. In support of this position the Union made the following contentions:

1. Currently the employees receive a \$450.00/month for one year for every ten years of service after 15 years of service to the City for retiree health insurance. The Union pointed out that the proposal changes this radically by eliminating all retiree health insurance for employees hired after January 1, 2007. It further decreases the amount of health insurance to six months instead of one year, if the employee was hired between January 1, 2000 and January 1, 2007.

2. The Union acknowledged that the MAPE employees agreed to the City proposed language but argued that there may have been other factors that led to that decision and a quid pro quo offered for that concession that this Union was not privy to.

3. The Union also argued that the position taken by the City reflected the same sort of attitude and lack of understanding of collective bargaining exhibited by the City Council in its other positions taken in this matter. The City is essentially asking the arbitrator to take away a benefit without any sort of concession by the City and no showing of compelling need to change the existing benefit. The City should understand that the time to change any employment benefits is *before* the Union shows up, not after. Once that happens it is only through collectible bargaining and negotiation that such benefits should be changed and the arbitrator should simply leave the relationship where it is and leave it to the parties to negotiate any changes to it.

## DISCUSSION OF RETIREE HEALTH INSURANCE – ARTICLE 17

Both parties argued that the arbitrator should be cautious about creating or taking away benefits without evidence of a compelling need for that change or a quid pro quo for the change. Since this is a first contract that admonition, as noted several times herein, is even more compelling. The evidence showed that the City currently provides retiree health insurance for the officers as noted by the Union. After 15 years of service a retiree is eligible for one year of coverage for every ten years of service to the City. The City pays up to \$450.00 per month for this benefit.

The City's proposal that no award be made at all finds no support. There is merit to the Union's assertion that a benefit the employees had prior to the certification of the Union should not be changed by an interest arbitrator without a showing of compelling need or quid pro quo. There is also merit to the claim that no quid pro quo need be offered for this benefit under these circumstances since it was already in existence prior to the certification. Frankly, it would normally be up to the City to show some sort of quid pro quo for the deletion or diminution of such a benefit under circumstances such as those presented here.

On this record there was no showing that the City offered anything to the Union in exchange for the change in this benefit. Further, the fact that the City has to account for this does not in and of itself provide any persuasive evidence of a need to change it. If that were all this record revealed the arbitrator would be constrained to adhere to the admonition of other well reasoned decisions not to change the existing relationship with regard to this benefit and leave it alone.

Here however there is also a strong policy in favor of internal consistency in regard to fringe benefits, like retiree health insurance. For whatever reason, the MAPE unit agreed to the language propose by the City as set forth in detail above. There was no evidence as to whether MAPE agreed to this language in exchange for some sort of concession or quid pro quo by the City and without such evidence on the record none can be assumed by an interest arbitrator.

On this record I must proceed with the evidence presented, which was that MAPE agreed to this language and that there is a strong policy in favor of internal consistency in fringe benefits like this. Without more, no other award can be made. Thus, by the slimmest of margin, it is determined that this policy of internal consistency provides just enough support for the City's position. Accordingly, the award is for the City's position as set forth above

#### **AWARD ON RETIREE HEALTH INSURANCE – ARTICLE 17**

The City's position is awarded. The language of article 17 shall read as follows:

Article 17 A. Full time regular employees hired prior to January 1, 2000 will be eligible for the following retiree health insurance program.

1. In order to be eligible, the full time regular employee must have fifteen (15) years of service at the time of retirement and must be legally qualified to draw a pension under PERA. In order to be eligible, the employee must also sign a retirement agreement with the City and provide at least two (2) month advance notice of retirement.

2. An eligible individual will receive one year of single health insurance coverage for every ten (10) years of service with the City. The benefit is based on full ten (10) year increments and is not prorated (for example, an individual with seventeen years of service would qualify for one year of single health insurance).

3. The benefit would cease upon the earliest occurrence of any of the following events:

- a. The employee reaches age 65
- b. The benefit is exhausted
- c. The employee dies

4. The City will pay up to a maximum of four hundred fifty (\$450.) per month for insurance, which represents seventy five percent (75%) of the current City coverage. The City will make this payment, in its discretion, either directly to the insurer through a voucher upon receipt of a statement or to the employee upon receiving an itemized receipt.

B. Employees with dates of employment prior to January 1, 2007 who do not qualify pursuant to Section 12.7(A) will be eligible for the following retiree health insurance program.

1. In order to be eligible, the full time regular employee must have fifteen (15) years of service at the time of retirement and must be legally qualified to draw a pension under PERA. In order to be eligible, the employee must also sign a retirement agreement with the City and provide at least two (2) month advance notice of retirement.

2. An eligible individual will receive six months of single health insurance coverage

3. The benefit would cease upon the earliest occurrence of any of the following events:

- a. The employee reaches age 65
- b. The benefit is exhausted
- c. The employee dies

4. The City will pay up to a maximum of four hundred fifty (\$450.) per month for insurance, which represents seventy five percent (75%) of the current City coverage. The City will make this payment, in its discretion, either directly to the insurer through a voucher upon receipt of a statement or to the employee upon receiving an itemized receipt.

C. Employees with dates of employment on or after January 1, 2007 are not eligible for a retiree health insurance benefit.

**SUMMARY OF AWARD**

**AWARD ON WAGES FOR 2008-2009**

Subject to the discussion above, the 2007 salary schedule is awarded as follows:

**2007**

0 -1 yr	1 yr+ - 2 yrs	2+ -3 yrs	3+ yrs - 4	4+ yrs	5+ yrs	6+ yrs
<u>Step 1:</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
\$14.65/hr	\$15.80/hr	\$16.93/hr	\$18.08/hr	\$19.23/hr	\$20.36	\$21.51/hr

The City's position is awarded for 2008 and 2009, i.e. 2.25% in 2008 and 2.5% in 2009.

**AWARD ON MANAGEMENT AUTHORITY – ARTICLE 4.2**

The City's position is awarded.

**AWARD ON POSITION ELIMINATION – ARTICLE 4.3**

The language of Article 4.3 shall read as follows:

Article 4.3 – Elimination of Position - In the event the City determines to take an action that will result in the expected permanent loss of a bargaining unit position, the parties shall meet and negotiate in good faith upon the request of the Union over the effects of the management decision.

**AWARD ON WORK SCHEDULE - ARTICLE 7.2**

The language of Article 7.2 is awarded as follows: "The standard work week shall be comprised of seven consecutive days consisting of 168 hours (Monday through Sunday)."

**AWARD ON RETIREE HEALTH INSURANCE – ARTICLE 17**

The City's position is awarded. The language of article 17 shall read as follows:

Article 17 A. Full time regular employees hired prior to January 1, 2000 will be eligible for the following retiree health insurance program.

1. In order to be eligible, the full time regular employee must have fifteen (15) years of service at the time of retirement and must be legally qualified to draw a pension under PERA. In order to be

eligible, the employee must also sign a retirement agreement with the City and provide at least two (2) month advance notice of retirement.

2. An eligible individual will receive one year of single health insurance coverage for every two (10) years of service with the City. The benefit is based on full ten (10) year increments and is not pro-rated (for example, an individual with seventeen years of service would qualify for one year of single health insurance).

3. The benefit would cease upon the earliest occurrence of any of the following events:

- a. The employee reaches age 65
- b. The benefit is exhausted
- c. The employee dies

4. The City will pay up to a maximum of four hundred fifty (\$450.00) per month for insurance, which represents seventy five percent (75%) of the current City coverage. The City will make this payment, in its discretion, either directly to the insurer through a voucher upon receipt of a statement or to the employee upon receiving an itemized receipt.

B. Employees with dates of employment prior to January 1, 2007 who do not qualify pursuant to Section 12.7(A) will be eligible for the following retiree health insurance program.

1. In order to be eligible, the full time regular employee must have fifteen (15) years of service at the time of retirement and must be legally qualified to draw a pension under PERA. In order to be eligible, the employee must also sign a retirement agreement with the City and provide at least two (2) month advance notice of retirement.

2. An eligible individual will receive six months of single health insurance coverage

3. The benefit would cease upon the earliest occurrence of any of the following events:

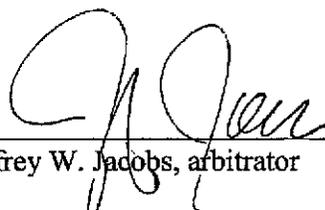
- a. The employee reaches age 65
- b. The benefit is exhausted
- c. The employee dies

4. The City will pay up to a maximum of four hundred fifty (\$450.00) per month for insurance, which represents seventy five percent (75%) of the current City coverage. The City will make this payment, in its discretion, either directly to the insurer through a voucher upon receipt of a statement or to the employee upon receiving an itemized receipt.

C. Employees with dates of employment on or after January 1, 2007 are not eligible for a retiree health insurance benefit.

Dated: October 21, 2008

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Jeffrey W. Jacobs, arbitrator