

IN THE MATTER OF THE ARBITRATION BETWEEN

08-11-08

THE METROPOLITAN COUNCIL	)	MINNESOTA BUREAU OF
MANAGEMENT ASSOCIATION,	)	MEDIATION SERVICES
	)	CASE NO. 08-PN-0048
	)	
	)	
Union,	)	
	)	
	)	
and	)	
	)	
THE METROPOLITAN COUNCIL,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

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On September 23, 2008, and on October 7, 2008, in St. Paul, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act ("PELRA") to resolve collective bargaining issues about which the parties

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are at impasse. Post-hearing briefs were received by the arbitrator on October 22, 2008.

#### BACKGROUND

The Metropolitan Council (the "Employer" or the "Council") is a regional agency created by the Minnesota Legislature to coordinate planning and development within the seven-county metropolitan area that includes the cities of Minneapolis and St. Paul and their suburbs. The Council's primary functions are carried on in three of its division -- the Community Development Division, which provides planning for regional development, the Transportation Division, which provides public transportation services in the seven-county area, and the Environmental Services Division, which maintains the area's 600 miles of sewers and treats about 300 million gallons per day of wastewater at eight treatment plants located within the area.

The Union is the collective bargaining representative of eighty-four employees who are managers, assistant managers and supervisors. About two-thirds of these employees hold such positions in the Environmental Services Division, and the rest work in the Community Development Division. Those who hold similar supervisory positions in the Transportation Division are members of a different supervisory union, the Transit Managers and Supervisors Association ("TMSA"). Hereafter, I adopt the assumption that the parties have made in presenting their evidence and argument -- that most members of the Union work in the Environmental Services Division. The median annual salary of bargaining unit members is about \$82,000. They have college

degrees or long experience in the fields in which they work, and most of them supervise professional or technical personnel.

The Union and the Employer have been parties to a series of labor agreements establishing the terms and conditions of employment of these employees, the last of which has a stated duration from July 1, 2004, through June 30, 2007. Because the parties have not yet agreed to all of the provisions of a new labor agreement, they continue to operate under the terms of the 2004-07 labor agreement, which I may sometimes refer to as the "current labor agreement." They have successfully negotiated some of the terms of their new labor agreement, but have reached impasse about several bargaining issues, described hereafter. In this proceeding, they seek to resolve those issues in arbitration, using the arbitration procedures established by PELRA.

On February 20, 2008, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to eight collective bargaining issues that are to be resolved in this arbitration proceeding. I refer to these issues by the following titles:

- Issue 1. Duration of the Agreement.
- Issue 2. Compensation - 2008.
- Issue 3. Compensation - 2009.
- Issue 4. Compensation - 2010.
- Issue 5. Employer's Insurance Contributions for 2008.
- Issue 6. Employer's Insurance Contributions for 2009.
- Issue 7. Employer's Insurance Contributions for 2010.
- Issue 8. Annual Leave Conversion.

#### ISSUE 1: DURATION OF THE AGREEMENT

As noted above, the current labor agreement has a three-year duration, established by its Section 24.01, thus:

The terms of this agreement shall take effect on July 1, 2004 and shall remain in effect through June 30, 2007 and shall continue from year to year thereafter from July 1 through June 30 of each year unless changed or terminated in the manner provided by this Article.

The Union's Position.

The Union proposes that the new labor agreement have a duration of three years, as established by the following amendment of Section 24.01 of the current labor agreement:

The terms of this agreement shall take effect on July 1, 2007 and shall remain in effect through June 30, 2010 and shall continue from year to year thereafter from July 1 through June 30 of each year unless changed or terminated in the manner provided by this Article.

The Employer's Position.

The Employer proposes that the new labor agreement have a duration of two and one-half years, as established by the following amendment of Section 24.01 of the current labor agreement:

The terms of this agreement shall take effect on July 1, 2007 and shall remain in effect through December 31, 2009 and shall continue from year to year thereafter from January 1 through December 31 of each year unless changed or terminated in the manner provided by this Article.

Decision and Award.

The Union makes the following argument. The parties' two labor agreements that preceded the current labor agreement also had three-year durations starting and ending in mid-year, from July 1, 1998, through June 30, 2001, and from July 1, 2001, through June 30, 2004. The Union argues that consistency in setting the same duration of labor agreements from agreement to agreement provides stability in bargaining.

The Union also makes the following argument. Article 10 of the current labor agreement establishes compensation levels that begin on the first day of each January within its duration -- on January 1, 2005, on January 1, 2006, and on January 1, 2007 -- even though Section 24.01 starts and ends the duration of the agreement in mid-year, from July 1, 2004, till June 30, 2007, unless extended. Similarly, Article 15 of the current labor agreement establishes the Employer's contributions to insurance premiums as of the first day of each January within its duration. The Union urges that the effect of setting the levels of compensation and insurance benefits to begin at the start of each calendar year within a contract duration that starts and ends at mid-year is beneficial to both parties -- because it allows stability of those payments during the six months that follow the nominal expiration of each agreement, as the parties are bargaining for a successor agreement.

In addition, the Union argues that, if the Employer's position on duration is awarded, the new labor agreement would expire less than fourteen months after the award is issued, requiring the parties to begin bargaining almost immediately.

The Employer argues that an award of its position, establishing a calendar year expiration of the parties' labor agreement, will align its end date with the end date of labor agreements the Employer negotiates with other unions representing its employees. The evidence shows that, of labor agreements the Employer negotiates with eleven other unions, five expire at the end of a calendar year -- one on December 31, 2007, one on

December 31, 2008, two on December 31, 2009, and one on December 31, 2010. Two labor agreements expire on July 31 -- one on July 31, 2008, and one on July 31, 2010. Four labor agreements expire on April 30 -- two on April 30, 2008, one on April 30, 2009, and one on April 30, 2010. The parties' agreement is the only one that expires on June 30. The Employer is attempting to establish a common expiration date for its labor contracts so that it can bargain in the same round of bargaining using a uniform percentage as a costing goal for all bargaining units.

For the following reasons, I award the Employer's position on this issue. A new labor agreement that expires at the end of 2009 will set compensation and insurance contributions for two years -- to start on January 1, 2008, and on January 1, 2009. A new labor agreement that expires six months later, on June 30, 2010, will set compensation and insurance contributions for three years -- to start on January 1, 2008, on January 1, 2009, and on January 1, 2010. Usually, in interest arbitration proceedings in which duration is an issue, I award the position that seeks a longer duration in order to provide the parties with a longer period of known compensation and costs before new bargaining. At present, however, as the parties have noted in their arguments, the economy of the United States and of Minnesota is undergoing a period of uncertainty. The prices of some goods have been inflating at fluctuating rates, while the prices of many assets, homes and securities, are deflating. In this period of uncertainty, a duration that ends on December 31, 2009, will provide the parties with more information about prices, costs and revenues before bargaining begins for 2010.

ISSUE 2: COMPENSATION - 2008  
ISSUE 3: COMPENSATION - 2009

Article 10 of the current labor agreement establishes the system by which bargaining unit employees are compensated.

Relevant parts of that article are set out below:

Section 10.01 - Job Classification and Pay Grades.

Job classifications shall be assigned to a pay grade based upon the job classification's duties, responsibilities, difficulty, and minimum hiring requirements. Pay grade assignments for the job classifications covered by this Agreement, along with each grade's annual salary range for the duration of this Agreement, are set forth in Appendix "A" of this Agreement.

Section 10.02 - Individual Employee Rates of Pay.

Rates of pay for employees covered by the terms of this Agreement shall, for the duration hereof, be determined in accordance with the provisions of this section.

General and performance salary adjustments shall be effective on the first day of the pay period beginning closest to January 1, 2006, and January 1, 2007.\*

Performance evaluations shall be conducted on a calendar year basis (January 1 to December 31st) with performance evaluations due by December 15th. All performance increases shall be based on the employee's performance review.

Effective on the first day of the pay period closest to January 1, 2006 and January 1, 2007 the following general and performance wage increases shall be based on the following provisions:

<u>Performance Rating</u>	<u>General Increase</u>	<u>Performance Increase</u>
Excellent	1%	0.75%
Very Good	1%	0.50%
Good	1%	0.25%
Fair	1%	0.00%
Unsatisfactory	0%	0.00%

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\* This provision does not refer to general and performance adjustments to be effective on January 1, 2005, because the parties agreed that there would be no increases for calendar year 2005. Nevertheless, the Pay Grades in Appendix A do list minimum, midpoint and maximum salaries for "01/01/05," as well as for "01/01/06" and "01/01/07."

Section 10.03 - New Bargaining Unit Employees.

. . .

Section 10.04 - Salary Ranges.

The salary range for each pay grade identified in Appendix "A" of this Agreement shall be defined by an annual minimum and maximum amount. Individual employee rates of pay shall be determined in accordance with the provisions of Section 10.02 of this Agreement and shall be fixed at levels within the applicable pay grade. In no event shall employees be compensated at rates which exceed the applicable salary range maximum provided, however, that in the event an employee has earned a salary increase, the application of which would place the employee's salary above the applicable salary range maximum, the excess annualized amount shall be paid to the employee in the form of a lump sum.

Section 10.05 - Salary Range Adjustments.

Salary ranges shall be increased by 1% on January 1, 2006 and January 1, 2007. Salary range adjustments shall be made prior to the performance and general wage adjustments.

Section 10.06 - Performance Evaluation Appeals.

. . .

Section 10.07 - Pay upon Promotion or Demotion.

. . .

Section 10.08 - Minimum Salary Standards.

The provisions of this Article shall not be considered by the Parties to express the minimum standards applicable to bargaining unit employees. In the event the Employer in its sole discretion acts to increase an employee's salary to levels above such minimum standards, such shall not be considered to be a violation of this Agreement.

Section 10.09 - Merit Program.

The Employer reserves the right at its sole discretion to award compensation in the form of merit awards in increments of \$500.00 to a maximum of \$1,000.00 per employee per year. Merit awards shall be paid in a lump sum.

Section 10.10 - Midpoint Movement.

An employee who is below the midpoint of his/her salary range as identified in Appendix A, on January 1, 2005, January 1, 2006, or January 1, 2007, will receive an additional 0.75% increase for that year or those years if such employee has received a "very good" performance rating or better in the performance year. The calculation precedes general and/or performance increases.

The Union's Position.

With respect to Issues 2 and 3 -- Compensation for calendar years 2008 and 2009 -- the Union proposes the following.

First. The Union proposes that the fourth paragraph of Section 10.02 be amended to provide general and performance increases in calendar years 2008 and 2009, thus:

Effective on the first day of the pay period closest to January 1, 2008, and January 1, 2009, the following general and performance wage increases shall be based on the following provisions:

<u>Performance Rating</u>	<u>General Increase</u>	<u>Performance Increase</u>
Excellent	4.0%	0.75%
Very Good	4.0%	0.50%
Good	4.0%	0.25%
Fair	4.0%	0.00%
Unsatisfactory	0%	0.00%

The Union proposes that the rest of Section 10.02 remain unchanged, except for changes of date needed to adapt the references in the current labor agreement to the years that are to be covered by new labor agreement -- 2008 and 2009.

Second. The Union proposes to retain the text of Section 10.04 as it appears in the current labor agreement. The Union proposes that the amounts of the range minimum, range midpoint and range maximum for each pay grade in Appendix A be increased "in accordance with the changes determined by the Arbitrator in Sections 10.02, 10.05 and 10.10."

Third. The Union proposes to retain the text of Section 10.05 except that it would increase the salary ranges referred to in that section by 4% on January 1, 2008, and by an additional 4% on January 1, 2009.

Fourth. The Union proposes that the new labor agreement retain "midpoint movement" as expressed in Section 10.10 of the current labor agreement, with amendments needed to adapt the new agreement to its new duration, thus:

An employee who is below the midpoint of his/her salary range as identified in Appendix A, on January 1, 2008, January 1, 2009, or January 1, 2010, will receive an additional 0.75% increase for that year or those years if such employee has received a "very good" performance rating or better in the performance year. The calculation precedes general and/or performance increases.

Fifth. The Union proposes retention of the remaining sections of Article 10, except for changes needed to adapt the new labor agreement to the years of its new duration.

The Employer's Position.

First. The Employer proposes that the new labor agreement retain the sections of Article 10, with changes needed to adapt it to the years of its new duration and with the following changes.

Second. The Employer proposes that the fourth paragraph of Section 10.02 be amended to provide general and performance increases in calendar years 2008 and 2009, thus:

Effective on the first day of the pay period closest to January 1, 2008, and January 1, 2009, the following general and performance wage increases shall be based on the following provisions:

<u>Performance Rating</u>	<u>General Increase</u>	<u>Performance Increase</u>
Excellent	2.25%	1.00%
Very Good	2.25%	0.75%
Good	2.25%	0.00%
Fair	2.25%	0.00%
Unsatisfactory	0.00%	0.00%

Third. The Employer proposes the deletion of Section 10.05 of the labor agreement, which in the current labor agreement, provides for range adjustments equal to the general increase provided for calendar years 2006 and 2007. The effect of the deletion of Section 10.05 would be to limit range movement for those employees whose salaries are currently at the top of the range or nearly at the top, i.e., within the percentage of any general increases awarded.

Fourth. The Employer proposes the renumbering of sections in Article 10 that appear after Section 10.05 -- if the award deletes that section.

#### Decision and Award.

The primary difference in the emphasis of the parties' arguments is a disagreement whether, as the Employer argues, internal considerations should be the primary influence in determining wages and insurance benefits, or, whether, as the Union argues, external comparisons should be primary.

The parties also disagree how the difference in the cost of their positions should impact the award, and they disagree about the way in which increases in the cost of living should be considered. In addition, they make several arguments, described below.

The Employer makes the following arguments about the financing of its operations. Revenues available to the Employer are constrained by recession. During 2007, the Council had budgeted revenue of \$656 million and budgeted expenditures of about \$662 million. Wastewater fees and transit fares provided

about \$273 million of revenues, state funding about \$215 million, federal funding about \$81 million and property taxes about \$67 million. Budgeted costs in the Transportation and Environmental Services Divisions were about \$436 million.

In February of 2008, the Minnesota Department of Finance estimated that revenues available to the State of Minnesota would decline substantially in 2008-2009 -- by more than \$900 million. Since then, economic conditions have deteriorated; rising unemployment and rising home foreclosures will impact revenues available to state and local governments and affect property tax capacities. The Employer anticipates a deficit of revenues over expenditures.

The Council's seventeen members, who are appointed by the Governor, are overseen by a commission of the Minnesota Legislature. The Council has adopted budgetary guidelines (the "Guidelines") that are intended to keep expenditures controlled during 2008, 2009 and 2010 in order to meet the financial constraints that have resulted from adverse economic conditions. The goal set by the Guidelines is that, in bargaining with the twelve unions representing employees of the Employer, 1) for any labor agreement with a two-year duration, the increased cost of wages and insurance benefits will be limited to no more than 5.5%, 2) for any labor agreement with a two and one-half year duration, that increased cost will be limited to no more than 6.6%, and 3) for any labor agreement with a three-year duration, that increased cost will be limited to no more than 8%.

The Employer's cost estimates -- whether costing its position or that of the Union -- attribute no increase in cost

to the last half of 2007, because, I assume, the current labor agreement is drawn in such manner that it sets the compensation and insurance contributions for all of 2007 even though its nominal duration expires on June 30, 2007. Thus, as the Employer calculates the cost of its position, compensation and insurance costs will rise by about 3.49% in 2008 and by about 2.99% in 2009, for a total increase of about 6.48%. This estimate assumes no range movement above the current range maximum by the members of the bargaining unit who are at or near the top of their Pay Grade range (nineteen of the eighty-four members at the time of the hearing), and it assumes lump sum payments to them in lieu of range movement. It also assumes adoption of the changes in the performance increases that the Employer has proposed -- though I note that the exact amount of cost attributable to that component of compensation is dependent on the number and level of performance evaluations that qualify employees for performance increases.

The Employer estimates the cost of the Union's position (adjusted to a two and one-half year contract duration) as follows. As noted above, the Employer's cost estimates of both its position and the Union's position attribute no increase in cost to the last half of 2007. As the Employer calculates the cost of the Union's position, compensation and insurance costs will rise by about 4.58% in 2008 and by about 5.46% in 2009, for a total increase of about 10.04%. This estimate assumes, as the Union has proposed, the retention of Section 10.05 of the labor agreement, which moves the range limits to accord with the general increases awarded. It also assumes that, as the Union

has proposed, the performance increases established by Section 10.02 will be unchanged -- though again I note that the exact amount of cost attributable to that component of compensation is dependent on the number and level of performance evaluations that qualify employees for performance increases.

The Employer argues that it has settled within the Guidelines with the unions representing five bargaining units it negotiates with, including the four largest units -- AFSCME, Council 5, representing 471 clerical, technical and professional employees, the Amalgamated Transit Union, representing 2,198 transit workers, the IUOE, representing 217 employees, and the the TMSA, representing 180 managers and supervisors in the Transportation Division. The Employer argues that labor relations stability will be adversely affected if the Union, which represents about 2% of its employees, is awarded compensation and insurance benefits with a cost that exceeds the Guideline limits. It fears such an adverse impact not only with respect to bargaining with units not yet settled in the current round of bargaining, but in the future round of bargaining with the units already currently settled.

The Employer rejects the Union's argument that non-union employees of the Employer have received increases above the Guidelines. It argues that the salary increases received by the Regional Director (4.25% in 2007 and 4.25% in 2008), by the Employer's General Counsel (3.5% in 2007 and 3.5% in 2008) and by other non-union personnel (3.11% in 2006, 2.69% in 2007 and 3.16%

in 2008) are based entirely on performance and, that, because they are not "automatic general wage increases" similar to the increases union personnel receive, they are not comparable.

The Union challenges the Employer's argument that the TMSA contract was settled within the Guidelines. The Employer costs that agreement, which was settled on September 25, 2008, just after the first day of hearing in this matter, at 8.14%, just above the goal set by the Guideline for a three-year agreement. The Union notes, however, that that total percentage, which is based on general increases of 2.25% in each of its three years, excludes what the Employer refers to as "non-negotiated equity adjustments," which the Employer is permitted by the TMSA labor agreement to provide. These adjustments will 1) for each of the first two years of the contract, provide a 1% increase, not to exceed \$2,000, for employees in Pay Grades 6, 7, 8 and 9, and a 1.5% increase, not to exceed \$2,000, for employees in Pay Grades 10, 11 and 12, and 2) for the third year of the contract, provide a 1.5% to 2% increase (variable, I assume, by Pay Grade). The intended goal of these non-negotiated equity adjustments is to assure that no member of TMSA will be below the 2007 range midpoint set by the current labor agreement between the Employer and the Union.

The Employer argues that it was appropriate to exclude these increases from the costing of the TMSA agreement because they were provided outside the collective bargaining process, and because they were provided to TMSA employees in order to correct an inequitable disparity between the higher salary

ranges of Union employees and the lower ranges of TMSA employees. The Employer presented evidence that, in Pay Grades 8, 9, 10 and 11, the TMSA range minimums and maximums have averaged from 6.5% to 10.7% below the Union's range minimums and maximums. The Employer argues that the Hay System of work point values for employees in those Pay Grades from both bargaining units are about the same, thus justifying, not only the granting of the non-negotiated equity adjustments, but their exclusion from costing for purposes of Guideline comparison.

The Union urges that a comparison of the duties and qualifications of the employees in the two bargaining units who occupy the same Pay Grades justifies higher pay for members of its bargaining unit, many of whom have advanced technical degrees and supervise others with advanced degrees, as compared to TMSA employees who supervise transit employees in less demanding positions.

The Union argues that these extra equity adjustments provided to TMSA employees should properly be considered part of the cost of their compensation. It calculates that if they were so considered the true costing of the increases in compensation and insurance benefits for TMSA employees would be about 12.39%, far above the 8% Guideline for a three-year contract. The Employer rejects this argument as "conjecture" and "gross exaggeration," again urging that the equity adjustments should be excluded from costing because they were non-negotiated and were designed to have the compensation of TMSA employees achieve a proper relationship to the compensation of Union employees. The Employer urges that the award here should not diminish the

Employer's effort to provide balance in the compensation levels of the two supervisory groups.

Both parties make arguments relating to the Minnesota Local Government Pay Equity Act (the "Pay Equity Act"), Minn. Stat., Section 441.991, et seq. The Employer argues that thirty-five of the forty-seven bargaining unit classifications are "male-dominated," as that term is used in determining compliance with the Pay Equity Act, and that thirty-four of those male-dominated classifications are presently paid above the "predicted pay" scale used to determine compliance. The Union argues that the latest certification from the Minnesota Department of Employee Relations ("DOER") shows the Employer to be in compliance and that an award of its position would not cause the Employer to be out of compliance. The Employer argues, in response, that such an award would increase the compensation of these male-dominated classifications so substantially that that award may put future compliance at risk.

With respect to the parties' disagreement about the proper level of performance increases, the Union argues that the Employer has made no showing that a change from the current distribution of performance based compensation is needed and that, in interest arbitration, the party seeking change, should be required to justify the change sought. The Union also argues that employees who receive a rating of "Good" are deserving of a performance based increase that rewards that performance. The Union prefers that funds available for compensation be allocated to a general increase rather than to an increase in performance

based compensation, which would restrict added compensation to employees in only two rating categories. The Union argues that the Employer has recently been intentionally reducing the number of ratings at the "Excellent" and "Very Good" levels, and that it intends to continue a reduction in the higher performance ratings, with a corresponding reduction in the number of bargaining unit employees who may benefit from the higher performance increases proposed by the Employer here for the top two rating categories.

The Employer rejects the Union's argument that the number of ratings at the "Excellent" and "Very Good" levels has been declining, and it denies an intention to reduce them in the future. The evidence shows the following range of evaluations from 2004 through 2007 (notwithstanding that the parties agreed not to provide either a general or performance increase in 2005):

<u>Rating</u>	<u>Year</u>	<u>Bargaining Unit Members So Rated</u>
<u>Excellent</u>	2004	38
	2005	26
	2006	21
	2007	22
<u>Very Good</u>	2004	27
	2005	43
	2006	46
	2007	50
<u>Good</u>	2004	7
	2005	3
	2006	4
	2007	4
<u>Fair</u>	2004	1
	2005	0
	2006	0
	2007	0

I note the following with respect to the difference in the parties' positions on performance increases, using as a base for comparison the evaluation categories as distributed in the last two years:

2007 -- Assuming Employer's Position:

<u>Number of Evaluations</u>	<u>Category</u>	<u>Per Cent Total</u>	<u>All Categories</u>
			<u>Per Cent Total</u>
22	Excellent X	1.00%	22.00%
50	Very Good X	0.75%	37.50%
			59.5%

2007 -- Assuming Union's Position:

<u>Number of Evaluations</u>	<u>Category</u>	<u>Per Cent Total</u>	<u>All Categories</u>
			<u>Per Cent Total</u>
22	Excellent X	0.75%	16.50%
50	Very Good X	0.50%	25.00%
4	Good X	0.25%	1.00%
			42.50%

2006 -- Assuming Employer's Position:

<u>Number of Evaluations</u>	<u>Category</u>	<u>Per Cent Total</u>	<u>All Categories</u>
			<u>Per Cent Total</u>
21	Excellent X	1.00%	21.00%
46	Very Good X	0.75%	34.50%
			55.5%

2006 -- Assuming Union's Position:

<u>Number of Evaluations</u>	<u>Category</u>	<u>Per Cent Total</u>	<u>All Categories</u>
			<u>Per Cent Total</u>
21	Excellent X	0.75%	15.75%
46	Very Good X	0.50%	23.00%
4	Good X	0.25%	1.00%
			39.75%

Similar calculations, using evaluation categories as distributed in 2005, would yield a "Per Cent Total All Categories" of 58.5%, assuming the performance increases here proposed by the Employer were then in effect, as compared to

a "Per Cent Total All Categories" of 41.75% assuming the performance increases here proposed by the Union (though, again, I note that the parties agreed that in 2005 there would be no general or performance increases). For 2004, similar calculations yield a "Per Cent Total All Categories" of 58.25%, assuming the performance increases here proposed by the Employer were then in effect, as compared to a "Per Cent Total All Categories" of 43.75%, assuming the performance increases here proposed by the Union.

The Union argues that an award of its position is especially justified because, in bargaining for the current labor agreement, it agreed to accept low levels of compensation for 2005, 2006 and 2007 -- 0% in 2005, 1% in 2006 and 1% in 2007 -- in response to the Employer's urging of restraint because of budget considerations. The Union presented evidence that, largely because of the rising cost of energy and food, the cost of living has been rising at an accelerated rate during the past year -- in excess of 5% per annum, notwithstanding a slight decrease in August, 2008. The Union argues that the reduced salary increases of the past three years and the rising cost of living justify the increases it now proposes.

The Employer argues that whatever effect increases in the cost of living have had, they have been the same for all of its employees, including all of those whose compensation and insurance benefits have been settled within the Guidelines. The Employer argues, therefore, that the principle of internal consistency and the constancy of the effect of inflation on all

employees should cause the rate of inflation to have no impact on the award.

The Employer argues that an award that retains the "salary range adjustments" established by Section 10.05 of the current labor agreement would have the effect of raising the cost increase for compensation and insurance benefits to 7.4% -- a departure from the Guideline goal of 6.6% for a contract of two and one-half years duration. In addition, the Employer notes that freezing the range maximums is consistent with the treatment of non-union employees who have not had range adjustments since 2006. In response, the Union notes that the range maximums of the Employer's Regional Director and its General Counsel were raised by 6% in 2006.

The Union argues that it is unfair to leave the nineteen bargaining unit employees who are now at the range maximum with nothing but a lump sum equal to the general increase, which, because it will not increase their salary level, will limit their future income and pension benefits.

As noted above, the Union argues that external or "market" comparison should be a primary influence on the award. The Union cites a "Compensation Analysis and Recommendations Report" (hereafter, the "Hay Study"), performed by the Hay Group after the Employer's lead negotiator, with the knowledge of the Employer's Regional Director, requested a market study in 2006. The Hay Study, which was completed in September of 2007, surveyed compensation levels at agencies similar to the Employer in other urban communities -- Orange County, California, Las

Vegas, Nevada, Detroit, Michigan, Oakland, California, Seattle, Washington, Boston, Massachusetts, Chicago, Illinois, and St. Louis, Missouri (and for two classifications, at comparable jurisdictions in Minnesota). The Hay Study examined compensation for "benchmark" classifications represented by other unions as well as twenty benchmark Environmental Services classifications, nine of which are among the forty-seven classifications that comprise the Union's bargaining unit. The Union argues that the Hay Study shows that for the nine Union positions that were surveyed, salary ranges should be increased by 18% in order to be comparable to the median in the Study's comparison group.

The Employer argues that the award should not be influenced by the Hay Study because the Council was not aware that it had been ordered by its lead negotiator and because the Council has never adopted any of its recommendations. Further, the Employer argues that, if the compensation increases that the Union would justify by the Hay Study were implemented, they would require such a large increase in its budget that the Legislature would be compelled to readdress total funding for the Employer's operations. In addition, the Employer argues that the communities which the Hay Study used in its survey are not comparable to the area served by the Employer because of many factors, including the larger population of many of those communities.

The Union urges that, notwithstanding the Employer's argument that the Council did not order and has never adopted

the Hay Study, it is relevant as a market study that shows that the compensation of bargaining unit members is substantially lower than that of others performing similar functions in other urban communities.

The Union argues that the 2,800 supervisory employees of the State of Minnesota, who are represented by the Middle Management Association ("MMA"), should also be used for market comparison. Those employees provide professional and technical services and supervise employees in all agencies of state government. The Union compares the percentage by which compensation of MMA employees has increased in recent years to the percentage by which compensation of its members has increased. The Union presented evidence that the labor agreement that covers MMA employees for the two years beginning on July 1, 2007, provided them with a general increase of 3.25% per year and that, during the previous three years, they received increases above what members of the Union received -- 0% in 2005, 1% in 2006 and 1% in 2007. Under the compensation scheme used in the labor agreement covering MMA employees, they receive annual step increments until they reach the top of the schedule. The Union argues that those steps average 3.7%, a percentage which, if added to their general increases, shows that members of the Union's bargaining unit should receive at least the percentage increases the Union proposes here.

The Employer presented the testimony of Sandra S. Blaeser, now the Employer's Assistant Director of Human Resources and formerly a negotiator for the State of Minnesota. She

testified 1) that the 2007-09 labor agreement with the MMA provided increases that were within the internal guidelines used by the State in bargaining for the 2007-09 biennium and 2) that, with 65% of the MMA employees at the top step on the salary schedule, the actual cost of step increases was about 0.8% or less.

The parties disagree whether the Employer has had difficulty in retaining bargaining unit employees and attracting new employees to vacant positions. The evidence shows that turnover has not been substantial and that vacancies attract a large number of applications.

The Union argues that, notwithstanding the Employer's argument that it is under financial constraints, an award of the Union's position will not have a significant effect on the Employer's budget. The Union argues that adoption of its positions on compensation and insurance benefits would cost the Employer about \$275,480 more than adoption of the Employer's positions on those impasse issues -- or expressed as a percentage of the Employer's total operating budget, only an additional 0.4%.

For the reasons given below, I make the following award. The text of Section 10.02, as it appears in the new labor agreement, shall be as set out below:

Section 10.02 - Individual Employee Rates of Pay.  
Rates of pay for employees covered by the terms of this Agreement shall, for the duration hereof, be determined in accordance with the provisions of this section.

General and performance salary adjustments shall be effective on the first day of the pay period beginning closest to January 1, 2008, and January 1, 2009.

Performance evaluations shall be conducted on a calendar year basis (January 1 to December 31st) with performance evaluations due by December 15th. All performance increases shall be based on the employee's performance review.

Effective on the first day of the pay period closest to January 1, 2008 and January 1, 2009 the following general and performance wage increases shall be based on the following provisions:

<u>Performance Rating</u>	<u>General Increase</u>	<u>Performance Increase</u>
Excellent	2.7%	0.75%
Very Good	2.7%	0.50%
Good	2.7%	0.25%
Fair	2.7%	0.00%
Unsatisfactory	0.0%	0.00%

First. I award the Union's position with respect to performance increases. I do so primarily to make available a slightly higher general increase for all bargaining unit members (except, as the parties agree, any who may receive an "Unsatisfactory" performance evaluation) -- thus to allocate cost to a slight improvement in compensation for all employees in the face of economic constraints. My calculations above show that the Employer's performance increase proposal, if in effect from 2004 through 2007, would have produced a total average percentage increase for those four years of about 57.94% spread among employees with qualifying performance ratings, whereas the Union's proposal would have produced a total average percentage increase for those four years of about 41.94% spread among employees with qualifying performance ratings. The difference of 16%, projected to the new agreement, if spread among eighty-four bargaining unit employees and reallocated to a general increase, will improve the general increase by about 0.02%.

Second. I award a general increase of 2.7% per year. This increase is about 0.25% above the 2.25% general increase

per year proposed by the Employer, augmented by the 0.02% reallocation of cost from the performance increase to the general increase, as discussed above. I recognize that the continuation of range adjustments, as established by Section 10.05, which I award below, will cause the cost of compensation and insurance benefits to exceed the Guideline, but not by a substantial amount. The Union's arguments that would justify an upward departure have some force -- 1) that its members accepted no salary adjustment in 2005 and only a 1% increase in each of 2006 and 2007, 2) that a larger salary increase is needed to offset the increased cost to its members of health and dental insurance, and 3) that the Employer has made departures from the Guidelines with respect to non-union employees, if not with respect to TMSA employees.

I find less force in the Union's arguments that the Hay Study shows apt external market comparisons that justify large increases in compensation -- because of differences between the market served by the Employer and the markets used in the Hay Study.

With respect to the Union's argument about the rising cost of living, the evidence shows that the rate of inflation is abating -- with a decline in the cost of housing and a decline of 0.4% in August, 2008, in the Consumer Price Index, after substantial increases in the cost of energy and food in the previous year. It does not appear that the award with respect to compensation will have any meaningful effect on the Employer's ability to comply with the Pay Equity Act.

I award a continuation of Section 10.05, amended as follows:

Section 10.05 - Salary Range Adjustments.

Salary ranges shall be increased by 2.7% on January 1, 2008 and on January 1, 2009. Salary range adjustments shall be made prior to the performance and general wage adjustments.

The Employer argues that an award that retains the "salary range adjustments" established by Section 10.05 of the current labor agreement would have the effect of raising the cost increase for compensation and insurance benefits to 7.4% -- a departure from the Guideline goal of 6.6% for a contract of two and one-half years duration. In addition, the Employer notes that freezing the range maximums is consistent with the treatment of non-union employees who have not had range adjustments since 2006. In response, the Union notes that the range maximums of the Employer's Regional Director and its General Counsel were raised by 6% in 2006.

I agree with the Union that it would be unfair to leave the nineteen bargaining unit employees who are now at the range maximum with nothing but a lump sum equal to the general increase, thus limiting their future income and pension benefits. The evidence shows that none of the settlements the Employer has reached with other unions eliminated range adjustments that are equal to the bargained general increase percentages.

ISSUE 4: COMPENSATION - 2010

The award of a contract duration ending on December 31, 2009, eliminates Issue 4 as an item at impasse.

ISSUE 5: EMPLOYER'S INSURANCE CONTRIBUTIONS FOR 2008  
ISSUE 6: EMPLOYER'S INSURANCE CONTRIBUTIONS FOR 2009

Relevant parts of Article 15 of the current labor agreement, establishing insurance benefits, are set out below:

Section 15.01 - Insurance Coverage.

The Employer shall maintain an insurance program consisting of hospital-medical, life, long-term disability and dental insurance benefits for all eligible employees. While the provisions of this Article describe the insurance benefits which were in effect at the time this Agreement was made, the Employer reserves the right to change carriers, providers and policies provided the benefits which were in effect at the time this Agreement was made are, on balance, maintained at comparable levels. The contracts between the Employer and the various insurance carriers or providers, and not this Agreement, shall govern all questions associated with claims, benefits and eligibility.

Section 15.02 - Hospital-Medical Insurance.

The hospital-medical insurance and/or HMO plan(s) offered by the Employer shall consist of benefits and conditions as established by the contract between the Employer and the selected insurance carrier and/or HMO provider. Required insurance and/or HMO premiums for all employees shall be paid in accordance with the following provisions. Employer contributions will not exceed actual premiums.

Subd. 1. Single Coverage.

Effective January 1, 2005, the Employer shall contribute \$470.28 per month of the required premium on behalf of each enrolled employee who elects single coverage.

Effective January 1, 2006, the Employer shall contribute \$513.00 per month of the required premium on behalf of each enrolled employee who elects single coverage.

Effective January 1, 2007, the Employer shall contribute \$559.00 per month of the required premium on behalf of each enrolled employee who elects single coverage.

Subd. 2. Family Coverage.

Effective January 1, 2005, the Employer shall contribute \$936.13 per month of the required premium on behalf of each enrolled employee who elects family coverage.

Effective January 1, 2006, the Employer shall contribute \$1,030.00 per month of the required premium on behalf of each enrolled employee who elects family coverage.

Effective January 1, 2007, the Employer shall contribute \$1,100.00 per month of the required premium on behalf of each enrolled employee who elects family coverage.

Payments required by the provisions of this Section shall be handled by authorized payroll deduction for employees in pay status.

Section 15.05 - Dental Insurance.

The dental insurance coverage provided by the Employer shall consist of benefits and conditions as established by the contract between the Employer and the insurance carrier. Payments required by the provisions of this Section shall be handled by authorized payroll deduction for employees in pay status. Employer contributions will not exceed actual premiums.

Subd. 1. Single Coverage.

Effective January 1, 2005, the Employer shall contribute \$32.75 per month of the required premium on behalf of each enrolled employee who elects single coverage.

Effective January 1, 2006, the Employer shall contribute \$35.00 per month of the required premium on behalf of each enrolled employee who elects single coverage.

Effective January 1, 2007, the Employer shall contribute \$37.50 per month of the required premium on behalf of each enrolled employee who elects single coverage.

Subd. 2. Family Coverage.

Effective January 1, 2005, the Employer shall contribute \$57.75 per month of the required premium on behalf of each enrolled employee who elects family coverage.

Effective January 1, 2006, the Employer shall contribute \$60.00 per month of the required premium on behalf of each enrolled employee who elects family coverage.

Effective January 1, 2007, the Employer shall contribute \$62.50 per month of the required premium on behalf of each enrolled employee who elects family coverage.

Payments required by the provisions of this Section shall be handled by authorized payroll deduction for employees in pay status.

The Employer's Position.

The Employer proposes to make no change in Article 15, except the following. The Employer would retain the first paragraph of Section 15.02 and add the following, as its second paragraph:

Effective January 1, 2009, Metropolitan Council shall also offer a high deductible health plan coupled with a Health Reimbursement Arrangement, referred to as the Metropolitan Council HRA Plan. The monthly employer contributions shown below for the HRA Plan do not include the annual HRA contribution, which is \$1,000 per year for single and \$2,000 per year for family insurance.

In addition, the Employer would amend the two subdivisions of Section 15.02 in the following manner. Subdivision 1, would continue to set the Employer's contributions for single coverage for Hospital-Medical Insurance. For calendar year 2008, it would provide employees with a monthly contribution of \$558.54 toward the premium for the insurance plan that is now in effect (which it refers to as the "Open Access Plan"). For calendar year 2009, the amended version of Subdivision 1 would provide employees with three choices -- to continue insurance coverage under the Open Access Plan, to elect coverage under a new insurance plan, referred to as the "Distinctions Plan," or to elect to enter the HRA Plan. The 2009 monthly contributions for single coverage under the Open Access and Distinctions Plans would be \$614.39, and the monthly contributions for single coverage under the HRA Plan would be \$494.66. I assume that, in accord with the proposed addition of the second paragraph of

Section 15.02, set out above, those electing single coverage under the HRA Plan would also receive "the annual HRA contribution" of \$1,000.

The Employer would amend Subdivision 2, which sets the Employer's contributions for family Hospital-Medical coverage, in the following manner. For calendar year 2008, it would provide employees with a monthly contribution of \$1,156.37 toward the premium for the Open Access Plan, which is now in effect. For calendar year 2009, the amended version of Subdivision 2 would provide employees with three choices -- to continue insurance coverage under the Open Access Plan, to elect coverage under the new Distinctions Plan, or to elect to enter the HRA Plan. The 2009 monthly contributions for family coverage under the Open Access and Distinctions Plans would be \$1,272.00, and the monthly contributions for family coverage under the HRA Plan would be \$1,107.16. I assume that, in accord with the proposed addition of the second paragraph of Section 15.02, set out above, those electing family coverage under the HRA Plan would also receive the annual HRA contribution of \$2,000.

The proposal to offer the Distinctions Plan as a third choice for Hospital-Medical coverage was added to the Employer's position on October 7, 2008, at the second day of hearing in this matter. As the Employer explained it that day, the Distinctions Plan permits employees to lower the portion of the premium they pay by electing service from low cost providers.

The Employer proposes that Section 15.05 of the current labor agreement be amended to set its monthly contribution

toward the premium for single dental insurance coverage at \$37.09 for 2008 and at \$39.87 for 2009. It proposes that its monthly contribution toward the premium for family dental insurance coverage be set at \$66.01 for 2008 and at \$70.95 for 2009.

The Union's Position.

The Union opposes the Employer's proposal to add either the HRA Plan or the Distinctions Plan as choices for Hospital-Medical coverage. The Union proposes to continue the present coverage (referred to in the Employer's proposal as the "Open Access Plan"), with the Employer's monthly contribution toward the premium for single coverage set at \$584.00 for 2008 and at \$654.08 for 2009. The Union proposes that the Employer's contribution toward the premium for family coverage under that plan be set at \$1,150.00 for 2008 and at \$1,288.00 for 2009.

The Union proposes that Section 15.05 of the current labor agreement be amended to set the Employer's monthly contribution toward the premium for single dental insurance coverage at \$40.00 for 2008 and at \$43.00 for 2009. It proposes that the Employer's monthly contribution toward the premium for family dental insurance coverage be set at \$66.00 for 2008 and at \$71.00 for 2009.

Decision and Award.

First. I award the change sought by the Employer that would permit employees to choose the HRA Plan, as established by the Employer's proposed addition of the second paragraph of

Section 15.02, as set out above. The Union argues that making such an option available to its members could diminish the pool of employees in the Open Access Plan and thereby make loss experience more volatile, with a corresponding volatility in cost. The Union also argues that an HRA Plan is less appropriate for its members, who tend to be older than many employees of the Employer.

I agree with the Employer, however, that making the HRA Plan option available even to these older employees will not have a substantial impact on the 1,200 member pool of employees enrolled in the Open Access Plan and that those who find advantage in that plan should have the option to select it.

Second. I do not award the inclusion of an option to choose the Distinctions Plan because, as the the Union argues, it did not have an opportunity to review and respond to that proposal.

Third. With respect to the amount of the Employer's contributions to premiums for Hospital-Medical and Dental insurance, I award the Employer's position. As the Employer argues, internal consistency is the almost universal standard used in interest arbitration for determining such insurance benefits. Though, as the Union points out, there are some departures from such consistency the Employer's contributions to premiums are, on balance, approximately the same for its other employees as as those it proposes here.

Fourth. I note that the parties have stipulated that nothing in Section 21.02, which relates to Hospital-Medical insurance for retirees, is at issue and that, the contribution

rates established in that section should be revised to accord with whatever changes occur in Article 15.

ISSUE 7: EMPLOYER'S INSURANCE CONTRIBUTIONS FOR 2010

The award of a contract duration ending on December 31, 2009, eliminates Issue 7 as an item at impasse.

ISSUE 8: ANNUAL LEAVE CONVERSION

The first paragraph of Section 12.11 of the current labor agreement is set out below:

Anytime during each calendar year of this Agreement, an employee may declare his/her intent to defer annual leave time to a deferred compensation account to the maximum allowed by law. Conversions must not cause an employee's balance to go below 200 hours at the time of actual conversion.

The Employer's Position.

The Employer proposes that Section 12.11, as it appears in the new labor agreement, be amended to provide:

Anytime between February 1st and October 31st of each calendar year of this Agreement, an employee may declare his/her intent to defer annual leave time to a deferred compensation account to the maximum allowed by law. Conversions must not cause an employee's balance to go below 200 hours at the time of actual conversion.

The Union's Position.

The Union proposes that the new labor agreement make no amendment of Section 12.11 as it appears in the current labor agreement.

Decision and Award.

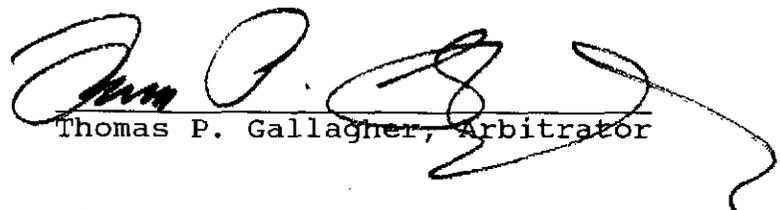
The Employer seeks to limit the time of year when an employee may elect to defer annual leave to a deferred compen-

sation account. It argues that its administrative staff has many other tasks to perform during the first month and the last two months of each calendar year and that the amendment proposed here will relieve staff of the task of processing elections to defer annual leave during those months.

The Union opposes the change sought by the Employer, arguing that many employees find themselves in circumstances that inhibit until the last months of the year their decision whether to use or defer annual leave. The Union notes that the Employer has not shown that the restriction on the time of election has been proposed for other employees, and it urges that the alleged administrative burden of processing leave deferring elections that may be made by the eighty-four members of this bargaining unit cannot be substantial. The Union also argues that the right to make the election at any time during the year has been in effect since 1997 and that, without a showing of substantial need, this provision should not be changed in interest arbitration.

I rule that, in the absence of a showing that the proposed change would relieve a substantial burden or inequity, it should be made in the give and take of bargaining and not by an arbitrator.

November 20, 2008



Thomas P. Gallagher, Arbitrator