

IN THE MATTER OF ARBITRATION BETWEEN

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| The Metropolitan Council, Metro Transit Police Department |) | BMS Case No. 08 – PN –1141 |
| |) | |
| |) | Issue: Interest Arbitration |
| |) | |
| and |) | Hearing Date: 01 –13 – 09 |
| |) | |
| |) | Brief Filing Date: 01 – 28 – 09 |
| Law Enforcement Labor Services, Inc.) Local No. 203 – Police Administration) & Command Employees |) | Award Date: 02 – 27 – 09 |
| |) | Arbitrator: Mario F. Bognanno |

I. JURISDICTION

Pursuant to Minn. Stat. § 179A.16, Subd.4, on January 13, 2009 the above-captioned matter was heard before Arbitrator Mario F. Bognanno in St. Paul, Minnesota. The parties in this matter are The Metropolitan Council (“Council” or “Employer”) and Law Enforcement Labor Services, Inc. (“LELS” or “Union”) who are signatories to an expired Collective Bargaining Agreement (“CBA”) that existed from January 1, 2005 through December 31, 2007. (LELS “Current Agreement” Tab & Council Exhibit 1) The parties reached impasse over the terms of several issues during the negotiations of a successor CBA and, subsequently, they selected this Arbitrator to resolve the issues in dispute. At the hearing, both parties were given a full and fair opportunity to present their case; witness testimony was sworn and cross-examined; and documentary evidence was accepted into the record. On or about January 28, 2009, the parties submitted timely post-hearing briefs and thereafter the matter was taken under advisement.

Judge Harry S. Crump (retired) attended the hearing under the auspices of the state of Minnesota, Bureau of Mediation Services' ("BMS") arbitrator-intern program and he prepared a preliminary draft of the instant award. However, as arbitrator of record, the undersigned bears sole responsible for the final award, as rendered.

The Union is the certified bargaining representative for Captains and Transit Police Supervisors (i.e., Sergeants) who are employees of Council's Metropolitan Transit Police Department ("MTPD"), Transit Operations Division ("TOD"). (LELS "Current Agreement" Tab & Council Exhibit 1) The Employer is a regional planning agency that services the Twin Cities seven county metropolitan area. Among the Council's organizational divisions is the TOD, which provides public bus and light rail transit services; and within the TOD is the MTPD, which consists of full-time and part-time police officers as well as the ten (10) police captains and sergeants who are represented by Union, among others. (LELS Brief at 1)

As previously observed, the parties were unable to negotiate a successor to their expired 2005 – 2007 CBA. Thus, as provided by Minn. Stat. § 179A.16, Subd. 3, the parties submitted their final positions on the issues in dispute to the commissioner of the BMS after he had certified the matter to be ready for binding arbitration. The following issues were certified to interest arbitration:

- ~~1. Duration – Article 19, Section 19.01: Term of the Agreement~~
2. Wages – Article 10, Section 10.01, Appendix A: 2008 annual rates of pay
3. Wages – Article 10, Section 10.01, Appendix A: 2009 annual rates of pay

- ~~4. Wages – Article 10, Section 10.01, Appendix A: 2010 annual rates of pay~~
5. Insurance – Article 15, Sections 15.02 & 15.05: 2008 amount of Employer contributions
6. Insurance – Article 15, Sections 15.02 & 15.05: 2009 amount of Employer contributions
- ~~7. Insurance – Article 15, Sections 15.02 & 15.05: 2010 amount of Employer contributions~~

(LELS “Union’s Position” and “Metro Council Proposal” Tabs & Council Exhibits 2, 3 and 5)

At the hearing’s commencement, the parties advised the undersigned that they had resolved issues 1, 4 and 7 prior to the arbitration hearing, which explains the above strikethroughs. The following agreed-upon language summarizes the resolution of issues 1, 4 and 7:

ARTICLE 19 – DURATION AND PLEDGE

Section 19.01 – Term of Agreement

The term of this Agreement shall take effect on January 1, 2008 and shall remain in effect through December 31, 2009 and shall continue from year to year thereafter from January 1st through December 31st of each year unless changed or terminated in the manner provided by this article.

(See, e.g., Council Exhibit 2)

II. APPEARANCES

For The Metropolitan Council:

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| Frank J. Madden | Attorney-at-Law |
| David Indrehus | Chief of Police, Metropolitan Transit Police Department |
| Ed Petre | Director of Finance, Metro Transit |
| Sandra Blaeser | Assistant Director, H. R. |

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| Barbara Padrnos | Benefits Manager, Metropolitan Council |
| Marcia Keown | Labor Relations Specialist, H. R. |
| For Law Enforcement Labor Services, Inc., Local No. 203: | |
| Nicholas Wetschka | Attorney-at-Law and Business Agent |
| Brooke Bass | Attorney-at-Law and Business Agent |
| Lieutenant Steve Sizer | Union Steward |
| Lieutenant Joseph Cardenas | Union Steward |

III. ABILITY-TO-PAY STANDARD IN INTEREST ARBITRATION AND THE ECONOMIC AND FINANCIAL BACKGROUND OF THIS CASE

As suggested above, the outstanding issues in dispute are the general wage increases and level of the Employer’s insurance contributions for the calendar years (“CY”) 2008 and 2009. Both of these issues are economic subjects and, therefore, are subjects to the ability-to-pay standard, as argued by the Council but largely rejected by the LELS.

Ability-to-Pay Standard In private and public sector interest arbitrations, the ability-to-pay standard is important in determining wage rates and other economic benefits. However, its importance mainly lies in determining the weight to be attached to the other standards that are used in interest arbitration and not *per se* in its use as the determining factor in deciding whether to change wage rates or some other economic benefit. *Elkouri & Elkouri, How Arbitration Works* (Washington, D.C.: Bureau of National Affairs, Alan Miles Rubin, ed. 6th ed. 2003), 1429.

In Minnesota public sector jurisdictions, a first cousin to the ability-to-pay standard in interest arbitration is what may be christened the “efficiency standard”, as referenced in Minn. Stat.179A.16, Subd.7. This subdivision provides in relevant part:

“the arbitrator ... shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.”

Without parsing these words and arguing the definitional distinctions between “ability-to-pay” and “efficiency”, the language in this subdivision of Minnesota Public Employee Labor Relations Act (“MPELRA”) leads the Arbitrator to the conclusion that the economic and financial concerns the Council raised and that, in relevant parts, were rejected by LELS warrant serious consideration.

Economic and Financial Background – The Council’s Case The Council is a creature of the state of Minnesota and, as such, is a Cabinet-level department of state government. (Council Exhibit 6) The Council’s work, operating and capital budgets, and capital improvement programs are overseen by the Commission on Metropolitan Government, made up of elected members of the Minnesota Legislature. This Commission, *inter alia*, makes recommendations to the Minnesota Legislature to change the Council’s tax rates, property tax levies and debt. (Council Exhibit 8) Established by the state of Minnesota, with oversight by a Minnesota Legislative Commission, the largest source of the Council’s 2007 budgeted revenues (\$655,793,188) is from the state of Minnesota (33 percent), followed by wastewater fees and service available charges (29 percent), transit fees (13 percent), federal funds (12 percent),

property taxes (10 percent) and other (3 percent). (Council Exhibit 9) This sketch of the Council's organizational relationship to the state of Minnesota and the sources of its revenues is to provide a solid understanding of the bands that connect the Minnesota economic climate to the state of Minnesota's finances and, ultimately, to the finances of the Council.

The economic climate in Minnesota is stormy. Early signs that the Minnesota economy was deteriorating began to surface during the second-quarter of CY2008, but more transparent signs began emerging in the third- and fourth-quarters of CY2008. During July, August, September and October, Minnesota experienced four consecutive months of job losses, with 7,500 jobs lost in October 2008 alone. With 175,000 unemployed Minnesota workers, the October 2008 seasonally adjusted unemployment rate was nearly 6 percent. (Council Exhibit 21) In November, 2008 the state lost another 10,500 jobs, and the seasonally adjusted unemployment rate reached 6.4 percent. By the end of the year the Minnesota State Economist, Tom Stinson, Ph.D., private corporate economists and research economists at the Minneapolis Federal Reserve Bank ("MFRB") were all predicting that more labor market erosion lies ahead. Indeed, the MFRB forecast a 7 percent CY2009 unemployment rate. (Council Exhibits 23, 24 and 25)

Paralleling, if not causing, the deterioration of the state's labor market had been months of falling overall economic activity, home values and consumer spending, along with rising housing market gluts and mortgage foreclosures – all economic phenomena that signaled declining sales tax revenues, business and

individual income tax revenues, delayed/falling property tax revenues and so forth, at the state level. These parallel parts of the Minnesota economy, like the Minnesota labor market, are projected to decline well into CY2009 and beyond. (Council Exhibits 15, 24, 25, 26 and 27)

Accordingly, in November 2008, the state of Minnesota revised its budget forecast for the current FY2008 – FY2009 biennium, noting mainly reduced revenues. It also anticipates that its budget problems will compound during the FY2010 – FY2011 biennium as revenues fall even further below estimates and expenditure projections increase. The state's revised budget forecast projected FY2008 – FY2009 and FY2010 – FY2011 biennia deficits of \$426.3 million and \$4.847 billion, respectively. (Council Exhibit 15)

To cover the FY2008 – FY2008 biennium deficit, on December 22, 2008, the Minnesota Commissioner of Management & Budget withdrew \$154.9 million from the state's budget reserve and deposited it in the state's general fund. He then directed a reduction of \$229.2 million in unexpended allotments of prior transfers from the general fund¹ -- actions designed to bring the FY2009 deficit to \$42.2 million. Also, the Commissioner reported that the \$42.2 million in deficit would be resolved by having cabinet agencies identify specific reductions totaling \$40 million by January 2, 2009, and by a voluntary reduction of \$2.2 million from the State Legislature. (Council Exhibit 17)

How do the above scenarios regarding the economic climate in Minnesota and finances of the state of Minnesota impact the Council's ability-to-pay? First,

¹ The \$229.2 million in unallocated transfers mainly came out of city and county aid, reduced human services payments, reduced state agency operations and reduced higher education spending. (Council Exhibits 17, 18 and 19)

the Council's "Unified Budget Summary" as adopted in CY2008 showed Total Expenditures exceeding Total Revenues by \$47.7 million and proposed a shortfall for CY2009 in the amount of \$56.7 million. (Council Exhibit 28) With respect to the latter shortfall, the Council's proposed plan called for using reserves to balance the CY2009 budget. Specifically, the plan called for using \$37 million in Service Availability Charges, \$7.3 million in Motor Vehicle Sales Taxes, \$13.3 million in Debt Service reserves and \$.9 million from Other sources. (Council Exhibit 28) Also, Ed Petre, Director of Finance, Metro Transit, credibly testified that the Council's proposed CY2009 shortfall of \$56.7 million was based on the state's February 2008 budget forecast. The implication being that if the Employer had available the state's November 2008 revised state budget forecasts of FY2008 – FY2009 and FY2010 – FY2011 biennia deficits of \$426.3 million and \$4.847 billion, respectively, then its proposed CY2009 shortfall would have been much larger.

The Council is comprised of five divisions, two of which are the Metro Transit Division ("MTD") and Metro Transportation Services Division ("MTSD") that in combination are referred to as the Transportation Division ("TD"). By Council policy the financial resources of each division are restricted to that organizational unit. That is, each unit is responsible for year-end deficits and surpluses that it generates. Therefore, the Council requires each unit to adopt a Target Fund Balance ("TBF"), to be used to meet the unit's cash flow needs and to protect against unanticipated events. In the MTD case, the bus and rail TBF is 8.3 percent of annual budgeted operating expenses, and the TBF for the MTS is

15 percent of annual budgeted operating expenditures. (Council Exhibit 29) As Mr. Petre also testified, the TBFs are fixed or exhaustible funds that cannot be used for continuing cash flow needs.

Mr. Petre further testified that based on the state's February 2008 forecast, the CY2009 budgets of the MTD and MTSD included anticipated shortfalls of \$5.1 million and \$2.2 million, respectively, with the sum of these deficits to be covered by drawing down \$7.3 million from Motor Vehicular Sales Taxes (MVST) or 2 percent of the TD's approximately \$32 million in reserve, along with some planned increase in bus and rail fares. (Council Exhibit 30) However, based on the state's November 2008 forecast, the TD's CY2009 projected shortfall of \$7.3 million has been increased by another \$18.8 million for a revised total shortfall of \$26.1 million, leaving a CY2009 deficit of \$18.8 million after drawing down MVST-based reserves by \$7.3 million. The record suggests that the CY2009 \$18.8 million deficit will be covered by further drawing down reserves, raising transit fares, curtailing some services and requesting more state funding. Moreover, this suggestion assumes that state appropriations would remain "flat". (Council Exhibits 31, 34 and 35, and Mr. Petre's testimony)

Based on state of Minnesota's November 2008 forecasts for FY2010 – FY2011, the Council's bus and rail operations faces a deficit forecast of \$61.3 million, recalling that FY2010 commences on July 1, 2009, and to avoid double counting, we reduce this amount by \$10 million to \$51.3 million for the biennium. (Council Exhibit 32) The reasons for the mounting year-after-year budget deficits are that Council revenues will fall because auto vehicle sales will fall, shorting

MVST revenues; falling fares attributed to falling transit ridership; and the expiration of one-time County Transit Investment Board (“CTIB”) grant funds of \$30.8 million.

Economic and Financial Background – The LELS’ Case As a general matter, the Union cites several reasons why the ability-to-pay standard should not be a subject of concern in this case. Among these reasons are the following: (1) the state of Minnesota did not reduce any part of the Council’s CY2008 allocation (Council Exhibit 20); (2) the Council’s ability-to-pay case is premised almost entirely on “expected”, “forecasted” or “projected” financial data, whereas, the only “hard” data in the record that speaks directly to the Council’s financial circumstances pertain to CY2006 and CY2007 – years during which the Council’s financial health was good (LELS “Ability to Pay” Tab at 13 – 42); and (3) the instant bargaining unit includes only ten covered employees whose wages and benefits comprise such an infinitesimally small share of the Council’s overall operating budget that the difference between the final positions of the LELS and Council amounts to .00011 percent of the Council’s CY2007 budget. Such a small “scale effect” reduces the ability-to-pay standard to irrelevance, urges the Union.

Economic and Financial Background – Discussion and Opinion

Minnesota’s economic climate and the adverse effect that it is having on the state of Minnesota’s and Council’s operating budgets are real. First, according to the Council’s adopted CY2008 Unified Budget Summary, its Expenditures exceeded Revenues by \$47.7 million. Second, at a minimum, the

parties' current round of negotiations bridged the calendar years 2008 and 2009 – a period during which the economic climate had become increasingly austere and the operating budgets of the state of Minnesota and the Council became increasingly bleak. Third, the positive correlation between (1) the budgets of the state of Minnesota and the Council, and (2) the economic climate and the budget of the Council almost certainly means that the Employer's economic future is not likely to improve, at least not during the second-half of CY2009.

Based on these findings of fact, it seems unmistakably clear that the ability-to-pay standard has a place in these deliberations. Given the Council's CY2008, CY2009 deficits and the likelihood that another one is looming for CY2010, it is entirely reasonable that the Council strive to maintain its AAA bond rating, hold property taxes flat, maintain an adequate reserve and not cut into service levels, although both reserves and service levels in the TD are currently giving way to financial pressures. Therefore, it would seem that the Council's deteriorating ability-to-pay should be a factor in assigning weight to the other criteria used in evaluating the parties' positions on the issues at impasse.

The Union demurs. However, the reasons it cites for setting aside consideration of ability-to pay standard are not entirely persuasive. Given that the current level of economic activity in Minnesota is eroding and near-term forecasts of its turnaround are not even hinted at in the record of this case, the state of Minnesota's FY2010 – FY2011 allocation to the Council is, at best, an open question (i.e., uncertain). This point is relevant because FY2010 commences on July 1, 2009. Next, as the LELS points out, it is true that the financial data

presented by the Council are largely prospective in nature (i.e., “expected”, “forecasted” or “projected” in nature). However, the issues in dispute in this case involve both CY2008 and CY2009 wage and insurance benefit adjustments. Thus, while CY2008 is history, the level of the TD’s CY2009 year-end operating deficit is yet to be determined, except to observe with near certainty that the deficit level is trending upward. The point being that interest arbitration awards that are issued in the present period and that cover wage and benefits paid out over future periods must rely on financial data that are prospective in nature. Indeed, the “ability-to-pay” standard may be more accurately dubbed the “prospective ability-to-pay” standard. Finally, while the LELS’ “scale-effect” reason for dismissing ability-to-pay standard is compelling, it alone does not serve to dismiss the importance of the ability-to-pay standard.

IV. ISSUES #2 & #3 – WAGE ADJUSTMENTS

Herein, we present the final CY2008 and CY2009 wage adjustment positions of the parties. Next, each party’s supporting evidence and arguments regarding these issues are summarized.

Final Positions of the LELS & Council The Union’s final position is for a general wage increase of 4 percent effective January 1, 2008 and 4 percent general wage increase effective January 1, 2009. Whereas, the Council’s final position is for a 2 percent general wage increase effective January 1, 2008 and 2.5 percent general wage increase effective July 1, 2009. (LELS “Union’s Position” and “Metro Council Proposal” Tabs & Council Exhibits 2, 3 and 5)

LELS' Supporting Evidence and Arguments Citing relevant precedent, the Union relies mainly on external comparisons in support of its 4 percent general wage increase for CY2008 and CY2009. *LELS and County of Morrison*, BMS Case No. 98-PN-84 (Miller, 1998); *LELS and City of Jordan*, BMS Case No. 97-PN-1254 (Martin, 1998); *LELS and City of Osseo*, BMS Case No. 98-PN-475 (Gallagher, 1998); *LELS and City of Mendota Heights*, BMS Case No. 01-PN-968 (Martin, 2001); *LELS and City of Belle Plaine*, BMS Case No. 06-PN-479 (Boyer, 2006); and *Duluth Police Union and City of Duluth*, BMS Case No. 07-PN-0383 (Bard, 2007). The Union also points to the internal equity (i.e., the Minnesota Pay Equity Act), internal comparisons and cost-of-living criteria for support of its position. As previously observed the LELS dismisses ability-to-pay concerns based on the infinitesimally small scale effect involved in this case. Even if it were large, the Union argues that its bargaining unit's supervisors should not bear the entire burden. In fact, the LELS suggests that the Council's expressed goal of holding property taxes flat warrants reconsideration.

External Comparisons – When making external comparisons the LELS relies on data showing the top monthly wages of sergeants in Stanton Group V suburbs of over 25,000 in population as of December 31st of a given year.² With respect to the list of twenty-five suburbs (including the Metropolitan Council), the LELS makes three points. First, the instant bargaining unit's top monthly wages ranked second, second, fourth and seventh for calendar years 2004, 2005, 2006

² The parties implicitly agree that the "Stanton Group V – Suburbs over 25,000" is the appropriate external comparison group. Apparently this agreement dates back 2003, when an arbitrator endorsed its application. *Metropolitan Council and LELS*, BMS Case No. 03-PN-1155 (Miller, 2003)

and 2007, respectively. Second, for twenty-two of the twenty-five suburbs that reached wage settlements in CY2009, the average percent increase in wages was 3.68 percent. Third, for twelve of the twenty-five suburbs that reached CY2009 settlements, the average percent increase was 3.90 percent. (LELS “External Equity” Tab at 188)

Next, the Union points out that If the Employer’s final wage adjustment position is awarded, then its top monthly wage rank within Stanton Group V will fall from seventh to thirteenth in CY2008 and to twentieth in CY2009. Whereas, if the LELS’ final wage adjustment position is awarded, the instant bargaining unit’s ranking will remain in seventh place in CY2008 and fall to eighth place in CY2009. (LELS “External Equity” Tab at 188) Therefore, based on accurate, apple-to-apple comparisons across Stanton Group V sergeant bargaining units, the LELS concludes that its final wage position more closely approximates the wage adjustment endorsed by the external comparison standard than does the Council’s.

Internal Equity –.The LELS makes three basic points with regard to the internal equity standard. First, the application of the internal equity standard is mandated by statute in Minnesota. Minnesota Local Government Pay Equity Act, Minn. Stat. § 471.992, Subd. 2 (2008) The Act requires that covered governmental jurisdictions maintain a minimum “underpayment ratio” of 80, where this ratio is defined as the percent of male classes below predicted pay divided by the percent of female classes below predicted pay.³ Second, the

³ A “male class” is defined as a job classification in which 80 percent or more of its members are male. A “female class” is one in which 70 percent or more of its members are female. To

January 31, 2007 Pay Equity Implementation Report to the Minnesota Department of Employee Relations shows that the Metropolitan Council's "underpayment ratio" was compliant at 106.6. (LELS "Internal Equity" Tab) Finally, the LELS avers that its proposed CY2008 and CY2009 wage adjustments should be awarded and, if so, the Council would remain Pay Equity Act compliant – an assertion that the Council did not dispute at the hearing.

Internal Comparisons – The LELS argues that the Council's CY2008 and CY2009 pattern of wage adjustments are neither established nor consistently uniform, casting doubt on the efficacy of the internal comparison criterion in this case. For example, among the seven other bargaining units with whom the Council has CBAs, its two other supervisory units, namely, MANA and TMSA, have received special consideration. The MANA unit's wage adjustments were interest arbitrated and the TMSA unit's wage adjustments included a special "market adjustment". (LELS' "Internal Equity" at 180) Further, the Union argues that to default to the Council's so-called pattern of internal wage adjustments ignores the "market" forces that influenced the settlements reached by the sergeant units in the external comparison group, which should be applied in this case.

CPI – Finally, the LELS points to a recent report by the U.S. Bureau of Labor Statistics, which shows that the Consumer Price Index for All Urban Wage

understand the meaning of "predicted pay", consider the estimation of a linear regression line that relates the pay of multiple job classifications to the classifications' "comparable work" points. Given the "comparable work" points of a specific job classification, if that job classification's actual pay is below its "expected" pay (i.e., the point of the regression line that corresponds to the "comparable work" points), then the classification is "below the predicted pay". (LELS "Internal Equity" Tab at 61-79)

Earners and Clerical Workers (CPI – W) increased from October 2006 to October 2007 by 3.5 percent in the Midwest. Compensating for the erosion that has taken place in unit member’s real earnings is the final reason the Union offers in support of its wage adjustment proposal.

Council’s Supporting Evidence and Arguments Citing different precedent, the Council relies on internal comparisons and internal equity standards in support of its 2 percent general wage increase for the period January 1, 2008 through June 31, 2009, and 2.5 percent increase effective July 1, 2009. *LELS and Chisago County*, BMS Case No. 95-PN-54 (Berquist, 1995); *LELS and Brown County*, BMS Case No. 99-PN-1075 (Ver Ploeg, 1999); *LELS and City of Bloomington*, BMS Case No. 98-PN-1225 (Neigh, 1998); *Human Services Supervisors Association and County of Dakota*, BMS Case No. 97-PN-837 (Wallin, 1997); *State of Minnesota and Minnesota Law Enforcement Association, Unit 1*, BMS Case No. 04-PN-145 (Miller, 2004); and *LELS and McLeod County*, BMS Case No. 03-PN-613 (Kircher, 2003). The Council’s use of the internal comparisons and internal equity criteria rests on its holding that it simply is unable to pay the wage adjustments the Union seeks in this case, without seriously compromising its public policy goals, abridging its internal bargaining parameters and creating labor relations instability.

External Comparisons – The Council begins by pointing out that the 2 percent wage increase it is proposing for CY2008 will result in a maximum monthly wages of \$6,660.26, which is \$42 per month higher than the maximum monthly wages for sergeants in the remaining twenty-four suburbs in the external

comparable group. (Council Exhibit 49) Accordingly, the Council argues that there is no market-based reason for increasing wages at a faster rate in CY2008. Further, because nine of the suburbs in the external comparison group have not reached CY2009 settlements, the Employer contends that the wage settlement data of the remaining suburbs comprise too small of a sample on which make reliable Stanton Group V inferences of the CY2009 average wage settlement. Nevertheless, the Council urges that its 2.5 percent proposed wage increase effective July 1, 2009 is quite competitive. (Council Exhibit 50)

Next, the Council notes that several of the Stanton Group V suburbs reported CY2008 and CY2009 maximum wage settlements that were reached during their CY2007 round of bargaining. At that time, the business climate was sound and no one was forecasting the economic and financial malaise in which the state of Minnesota and Council currently/prospectively find themselves.

Finally, the Employer cautions against placing reliance on the rank order of any bargaining unit within the comparison group. It argues that while a bargaining unit's maximum monthly wage rank may fall, its health insurance (or some other measure of economic welfare) rank may rise. The point being that the many wage and benefit indexes that can be ranked and each unit's rankings depends on the contracting parties' "wage and benefit packaging" preferences and on such exogenous factors as Pay Equity. *City of Fridley and LELS*, BMS Case No. 08-PN-828 (Miller, 2009)

Internal Comparisons & Internal Equity – The Employer presents a four-part internal comparison case. First, at the onset of the CY2008 bargaining

round, the Council established negotiating parameters governing the total cost of its wage and insurance settlements. Based on each contract's duration, the parameterized rate of increase in the total cost of settlements are as follows:

- 17 month terms, 3.77 percent increase;
- 24 month terms, 5.50 percent increase;
- 30 month terms, 6.66 percent increase; and
- 36 month terms, 8.00 percent increase.

Second, of its twelve bargaining units, six of the Council's units have reached negotiated settlements and another was settled through interest arbitration. The duration of each unit's term, name, size, full cost of settlement and Council's settlement parameter are depicted in Table 1. The Council has not reached settlements with its Full-Time Police Officers – Metro Transit and three of its craft unions (i.e., IBEW Local 110, IUPAT Local 61 and Pipefitters Local 455). Finally, except for the MANA bargaining unit, the Council maintains that (1) given contract durations, total settlement costs across bargaining units are remarkably similar, and (2) the total settlement costs for each unit adheres to the total settlement cost parameters instituted by the Council.⁴ The MANA total package adjustment exceeds the relevant Council parameter by 1.12 points. This difference, the Council argues, is the result of extraneous circumstances – the MANA contract was not a negotiated settlement but rather the result of interest

⁴ The TSMA total package adjustment exceeds the relevant Council parameter by only .14 points even though the Council established uniformity between the TMSA and MANA salary ranges. These salary range adjustments were prompted by the fact that similar mid-management positions in identical grades has identical work point values. In addition, the Council provided the TMSA employees with a non-negotiated equity adjustment.

arbitration. *Metropolitan Council Management Association and Metropolitan Council*, BMS Case No. 08-PN-0048 (Gallagher, 2008)

Table 1. Metropolitan Council Total Settlement Costs for CBA Term's Ending on December 31, 2009

| <u>17 – Month Term</u> | <u>Size^a</u> | <u>Settlement Cost^b</u> | <u>Settlement Parameter</u> |
|---|-------------------------|------------------------------------|-----------------------------|
| 1. Machinists, IAM Local 77 | 43 | 3.58 percent | 3.77 percent |
| <u>24 – Month Term</u> | | | |
| 2. P. T. Police, LELS ¹ | 58 | 5.54 percent | 5.50 percent |
| 3. AFSCME, Council 5 | 469 | 5.52 percent | 5.50 percent |
| 4. Metro Transit ATU Local 1005 ² | 2,235 | 5.59 percent | 5.50 percent |
| <u>30 – Month Term</u> | | | |
| 5. Managers Asso. MANA – Interest Arbitrated | 85 | 7.78 percent | 6.66 percent |
| <u>36 – Month Term</u> | | | |
| 6. Operating Eng. IUOE Local 35 | 209 | 7.89 percent | 8.00 percent |
| 7. Transit Mgrs. & Supervisors Asso. (TMSA) ³ | 177 | 8.14 percent | 8.00 percent |
| ^a Council Exhibit 39 ^b Council Exhibits 41, 42, 43 and 44 ¹ Contract term ends on April 30, 2010 ² Contract term ends on July 31, 2010 ³ Contract term ends on December 31, 2010 | | | |

Third, with respect to the instant matter the Employer observes that the total cost of its January 1, 2008 through December 31, 2009 final wage and

insurance package, including FICA, MSRS, LTD and Life Insurance, will increase by 5.59 percent from its December 31, 2007 base. This percentage increase is slightly above the Council's total cost of settlement parameter for a two year contact, but it is well within the range of kindred negotiated settlements reached where the 3.50 percent parameter applied. (See Table 1) In contrast, the Employer notes that the total biennial cost the Union's wage and insurance package, including FICA, MSRS, LTD and Life Insurance, will increase by 10.60 percent, which is significantly above the Council's controlling parameter of 5.50 percent. (Council Exhibit 54)

Finally, the Employer predicts that if the Arbitrator grants the sergeant's unit the biennial wage and insurance increase it seeks, he will set off a round of "whipsaw" bargaining by the six bargaining units that already have settled within the Council's parameters. These six units include the ATU Local 1005 and AFSCME Council 5; the Council's two largest bargaining units with 2,235 and 469 members, respectively. The "scale effect" argument of the LELS notwithstanding, the Council urges that in all likelihood these and the other settled units will be demanding higher wage and insurance contribution packages when their CBA's expire later this year and next year, exponentially driving up labor costs at this most inauspicious time in the business cycle. Also, the Council urges that pay equity considerations favor its position because the "male dominated" sergeant's classification with 393 "work points" currently exceeds the "predicted pay" by \$579.50 per month. (Council Exhibit 43A)

CPI – Finally, the Council dismisses the Union’s suggestion that price inflation somehow supports its requested CY2008 and CY2009 wage adjustments. With reference to LELS “Other Economic Factors” Tab at 270, the Council points out that Consumer Price Index for All Urban Consumers (CPI – U) actually fell in the months of October 2008 and November 2008 by -1.0 percent and -1.7 percent, respectively. Further, the Employer observes that the instant bargaining unit is not unique. That is, the adverse effects of inflation weighs equally on the members of the sergeant’s bargaining unit and the member of the Council’s other bargaining units, most of which entered into voluntarily CBAs.

V. ISSUES #5 & #6 - COUNCIL’S CONTRIBUTIONS TO INSURANCE

The parties’ final positions regarding the Employer’s contributions to insurance are presented first. Next, the evidence and arguments marshaled by each party in support of its position are summarized.

Final Positions of the LELS & Council The Union’s final position in regard to the levels and effective dates of the Employer’s insurance contributions is as follows:

| | <u>01-01-08</u> | <u>01-01-09</u> |
|-----------------|-----------------|-----------------|
| Medical Single: | \$ 558.54 | \$ 615.00 |
| Medical Family: | \$1,100.01 | \$1,210.00 |
| Dental Single: | \$ 37.09 | \$ 40.00 |
| Dental Family: | \$ 68.25 | \$ 75.00 |

The Employer’s final position on the levels and effective dates of its insurance contributions are as follows:

| | <u>01-01-08</u> | <u>06-01-08</u> | <u>01-01-09</u> |
|---------------------|-----------------|-----------------|-----------------|
| Open Access Single: | \$ 482.50 | \$ 530.96 | \$ 581.23 |

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|---------------------|-----------|-----------|------------|
| Open Access Family: | \$ 834.37 | \$ 996.33 | \$1,115.89 |
| HRA Single: | \$ 401.77 | \$ 449.69 | \$ 499.16 |
| HRA Family: | \$ 652.70 | \$ 924.24 | \$1,025.91 |
| Dental Single: | \$ 34.93 | \$ 37.09 | \$ 39.87 |
| Dental Family: | \$ 65.79 | \$ 78.39 | \$ 84.27 |

(LELS “Union’s Position” and “Metro Council Proposal” Tabs & Council Exhibits 2 and 53)

LELS’ Supporting Evidence and Arguments Initially, the LELS urges that its health and dental insurance proposal is similar to those negotiated between the Employer and several of its other bargaining units. (LELS “Other Economic Factors” at 283) Related to this point is that where organization-wide benefits (e.g., health/dental insurance) are concerned, the controlling standard in interest arbitration is internal comparisons. To anchor this point, the LELS cites precedent that goes back nearly twenty-five years. See, for example, *City of Farmington*, 85 LA 460 (Bognanno, 1985). Arbitral notice is taken of the fact that the Council concurs that this is the dominant view of interest arbitrators.

Council’s Supporting Evidence and Arguments Barbara Padrnos, Benefits Manager, Metropolitan Council, testified for the Council in support of its final health and dental insurance proposal. First, Ms. Padrnos considered external comparisons, having collected 2008 health insurance data for the Council and thirteen other Stanton Group V suburbs. She testified that the Employer’s monthly family cost for 2008 health insurance was \$834.37 – higher than that paid by ten other suburbs. (Council Exhibit 58) She also testified that in CY2008 the maximum out-of-pocket health benefit payments were much lower for members of the LELS bargaining unit than they were for the sergeants in the

referenced suburbs and the same is true of “office visit” co-payments. (Council Exhibits 59 and 60) Moreover, she referenced data showing that the LELS unit’s prescription drug co-payments are low relative to those of the suburban cities of Roseville, Maplewood, Lakewood, Cottage Grove and Bloomington. (Council Exhibit 61)

Second, Ms. Padrnos testified that the Employer has put forth a two-year wage and health/dental insurance package that will cost 5.59 percent, just .09 points higher than the Metropolitan Council’s controlling bargaining parameter. Further, the 5.59 percent target is insurance-sensitive. That is, the total benefit cost increase under the proposals submitted by the Council and the Union is 22.41 percent and 32.22 percent, respectively. Finally, Ms. Padrnos points out that there are differences with regard to the amount of Employer’s contribution to health/dental insurance among its bargaining units. However, she adds, these differences stem from the Council’s flexibility in regard to how total wage and benefit costs are divided between wages and the Employer’s contributions to health/dental insurance.

VI. DISCUSSION AND OPINION

This analysis begins with an evaluation of the external comparative settlements. However, the relevant set of external suburbs and their wage settlements must first be identified. Our starting point is the Union’s maximum monthly wage data for the CY2008, which ended on December 31, 2008.⁵ (LELS “External Equity” Tab at 188) From this list of suburbs, we first delete the

⁵ The analysis begins with these data for the reason discussed on pages 6 and 7 of the LELS’ post-hearing brief.

maximum monthly wages of Bloomington and Fridley, because these wages were set by interest arbitrators. The relevant external wage settlements in this analysis include only those that were the result of voluntary collective bargaining. In interest arbitration cases, the arbitrator's fidelity is to the collective bargaining process and to its outcome. As such, the arbitrator's goal is to award wage adjustments that approximate a settlement that the parties themselves would have reached had their negotiations succeeded. Thus, in interest arbitration only collectively bargained settlements are used to determining wages because they alone best signal to the arbitrator the bargain the disputing parties may have struck had their negotiations succeeded. Next, we add to the Union's list \$6,532.00 and \$6,406.00 in maximum wage settlements for the suburbs of Roseville and Oakdale, respectively. Apparently, these settlement results were not available to the LELS when it compiled page 188 in the External Equity Tab. However, they are reported in Council Exhibit 49.⁶

Using the adjusted wage settlement data, it is determined that the average CY2008 maximum monthly wages for sergeants in the Stanton Group V is \$6,704.97, representing an annual increase of 3.37 percent over the previous year. The comparable LELS CY2008 wage request is 4 percent, which would raise the maximum monthly wage of sergeants to \$6,790.86 – \$85.89 per month higher than the comparison group's average. The comparable Council CY2008 wage request is 2 percent, which would raise the maximum monthly wage of

⁶ Arbitral notice is taken of the fact that Eden Prairie is among the Stanton Group V cluster of suburbs and maximum monthly wage data for Eden Prairie sergeants are reported in LELS "External Equity" Tab at 188. However, comparable data do not appear in Council Exhibits 47, 48, 49 and 50. The record does not explain this difference.

sergeants to \$6,660.26 – \$44.71 per month lower than the comparison group's. Moreover, with the adjusted wage settlement data, it is determined that the Union's CY2008 maximum monthly wage proposal will leave it in the seventh rank ordered place among the Stanton Group V suburbs. In contrast, its rank order falls from seventh place in CY2007 to thirteenth place in CY2008 under the Council's proposal wage settlement

With respect to CY2009, data from LELS "External Equity" Tab and Council Exhibit 50 suggest that fourteen of twenty-two Stanton Group V suburbs reached a negotiated wage settlement; excluding Apple Valley and Fridley whose CY2009 maximum wage rates were the result of interest arbitration. Counted among the suburbs with negotiated settlements are Minnetonka (\$6,809.00) and Oakdale (\$6,614.00). (See Council Exhibit 50) With these data, it is determined that the average CY2009 maximum monthly wages for sergeants in the Stanton Group V is \$7,019.40, which represents an average increase of 3.93 percent over CY2008. The comparable LELS CY2009 wage is \$7,062.50 or \$43.10 per month higher than the comparison group's average – a 4 percent increase. The comparable Council CY2009 wage is \$6,826.77 or \$192.63 per month lower than the comparison group's average – a 2.5 percent increase (effective July 1, 2009).

The foregoing analysis reveals that the Employer's CY2008 and CY2009 wage adjustment proposals lag behind the average wage adjustments realized among Stanton Group V units. Thus, under the Employer's wage proposals the Union's maximum monthly wage falls in ranking, as the Union suggested. On the other hand, the Union's CY2008 and CY2009 wage adjustment proposals lead

the average wage adjustments realized among Stanton Group V units, with its ranking remaining relatively stable.

Next, we query, “Might the parties have voluntarily negotiated CY2008 and CY2009 wage settlements that exceed the average negotiated wage settlements reached by the relevant external comparison group?” The answer to this question is “No”. The economic context in which the wage settlements of the relevant comparison suburbs were negotiated was entirely different from the 2008 and 2009 economic context. The information regarding the dates on which the comparison group’s negotiated wage increases took effect tend to support the Employer’s contention that most were reached in CY2007. (Council Exhibit 48) And, as previously discussed, Minnesota’s general economic conditions have deteriorated sharply since CY 2007. For this reason, the wage and insurance terms that the instant parties might have voluntarily negotiated under the prevailing economic and fiscal regime most likely would have been different from those that were negotiated by comparable external bargaining units during better times – 2007. Accordingly, the Arbitrator is not inclined to rely on the “dated” negotiated settlements of comparable external bargaining units – a conclusion that is strongly attenuated by the Employer’s increasingly strained ability-to-pay.

What of the Union’s contention that the standing of the ability-to-pay standard is inapplicable in this case because the sergeant’s unit is so small that the “scale effect” of the LELS’ proposed wage and insurance package would be negligible? This reasoning has appeal, however, it is lacking in one critical dimension. Namely, to award the Union’s package, for this reason, would be to

deviate from the relevant total settlement cost parameter set by the Council, risking a possible round of “whipsaw” bargaining, as argued by the Employer. That is, the bargaining units that are now working under wage and insurance terms and that were negotiated within the Council’s settlement parameters would likely ratchet up their negotiating demands in the next round of bargaining. Specifically, the Arbitrator notes that among these bargaining units are the Machinists, IAM Local 77 (size = 43) and AFSCME Council 5 (size = 469) whose agreements expire on December 31, 2009, and the agreement with the behemoth Metro Transit, ATU Local 1005 (size = 2,235) that expires on July 31, 2010. (See Table 1)

The dismal current and prospective economic and financial climate and its corollary, the desolate current and prospective budget deficits the Council faces⁷ cannot sustain the labor relations instability, including the possibility of strikes, that “whipsawing” might engender. Thus, given the economic and financial background of this case, it is difficult for the Arbitrator to conclude that the Employer would ever have voluntarily negotiated the terms comprising the Union’s wage and insurance package. The percentage increases in the total cost of the Employer’s and Union’s settlement packages are 5.59 percent and 10.6 percent, respectively. These divergent package costs form a large gap that would have been bridged mainly by Union concessions if the collective bargaining process had worked as it should have.

⁷ Recall that the Council’s “adopted” deficit was \$47.7 million in CY2008 and its “proposed” deficit is \$56.7 million in CY2009; and further, as previously discussed, the TD is currently operating under conditions of anticipated shortfalls.

Internal comparisons and discussion of the parties' history of "pattern bargaining" constitute a large part of the case's record. Indeed, the commitment to "pattern bargaining" is what makes credible the prospect of "whipsawing", as discussed above. In this regard, three related points direct the award issued in this decision. First, the record evidence credibly shows that the Employer is flexible with regard to negotiating trade-offs between wage and insurance costs, provided that the Council's total settlement cost parameter is not breached. Second, during the most recent round of settlements, as depicted in Table 1, the total cost of the settlements, adjusted for variations in contract durations, are all quite similar across bargaining units and all approximate the Council's settlement parameters,⁸ which is proof of "pattern bargaining". Finally, it is uncontroverted that when the Council determined its settlement parameters, it took into account the current and prospective economic/financial circumstances and public policy goals and objectives, including maintaining its AAA bond rating, holding property taxes flat, maintaining adequate reserves and not cutting service levels: all public policy goals and objectives that seem reasonable on their face.

For these reasons, the internal comparison standard is assigned controlling weight in this decision, particularly given the significant (in)ability-to-pay overtone in this case. Further, the Arbitrator is not inclined to consider trading off wage adjustments and Employer contributions to health/dental insurance, even though they may be within the limits of the Council's total cost parameter. The reason being, the Union did not reveal any preferences in this

⁸ For purposes of this analysis, the Arbitrator set aside the MANA settlement because it was an arbitrated settlement.

regard. Finally, the parties' evidence and arguments with regard to the internal equity and cost of living standards were considered but found not to be dispositive of the interests in dispute.

VII. AWARD

For the reasons discussed above, the Council's final positions on Issues #2 and #3, Wage Adjustments, are awarded. Moreover, the Council's final positions on Issues #5 and #6, Employer's Contributions to Insurance, are awarded.

Issued and ordered on this 27th day of
February from Tucson, Arizona.

Mario F. Boganno, Labor Arbitrator