

**IN THE MATTER OF ARBITRATION BETWEEN**

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City of Coon Rapids,

Employer,

and

Law Enforcement Labor  
Services, Inc.

Union.  
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**INTEREST ARBITRATION  
DECISION AND AWARD**

BMS CASE NO. 10-PN-0861

ARBITRATOR:

Stephen A. Bard

DATE OF HEARING:

July 14, 2010

PLACE OF HEARING:

Coon Rapids City Hall

DATE OF RECEIPT OF POST-HEARING BRIEFS:

July 30, 2010

DATE OF DECISION AND AWARD:

August 9, 2010;

APPEARANCES:

For the Employer:

Mr. Scott Lepak  
Barna, Guzy & Steffen, Ltd.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Coon Rapids, MN. 55433

For the Union:

Mr. Nick Wetschka  
Business Agent  
Law Enforcement Labor Services, Inc.  
327 York Avenue  
St. Paul, MN. 55130

## **INTRODUCTION**

The parties are signatories to a three year collective bargaining agreement which expired December 31, 2009. The parties were unable to resolve all of their issues in negotiations for a successor contract and submitted their final positions to the Bureau of Mediation Services for a Certification of Issues at impasse and conventional interest arbitration. This matter then came on for hearing before Neutral Arbitrator Stephen A. Bard, on July 14, 2010 , at 9:00 a.m. in Coon Rapids, Minnesota. The Employer was represented by Mr. Scott Lepak. The Union was represented by Mr. Nick Wetschka.

Exhibits and arguments were presented at the time of the hearing and at the conclusion thereof the parties agreed to simultaneously serve and submit briefs on July 30, 2010 .

## **ISSUES**

Six issues were certified at impasse by BMS. These concerned the following provisions of the collective bargaining agreement (“CBA”):

- |          |   |
|----------|---|
| Issue #1 | Insurance (Article 18.1).                           |
| Issue #2 | Vacation (Article 22.1)                             |
| Issue #3 | Specialty Pay--Amount (Article 27.1)                |
| Issue #4 | Specialty Pay--Method of Computation (Article 27.1) |
| Issue #5 | Uniforms (Article 20.1)                             |
| Issue #6 | Wages (Appendix A-A1)                               |

**FINAL OFFERS OF THE PARTIES:**

A side by side comparison of the final position of each party is summarized as follows:

<u>ISSUE</u>	<u>UNION POSITION</u>	<u>CITY POSITION</u>
<b>#1--Insurance</b>	Effective 01/01/10 increase employer's contribution to: Single--770.24 Family--\$1,317.13 Dental-- \$39.81	No change.

<u>ISSUE</u>	<u>UNION POSITION</u>	<u>CITY POSITION</u>
<b>#2--Vacation</b>	For each year of employment after year 20, add one additional day of vacation each year through the 25 <sup>th</sup> year, capping at 25 days per year.	No change.
<b>#3--Specialty Pay (Amount)</b>	Raise specialty pay by \$10 per month in 2010.	No change.
<b>#4--Specialty Pay (Computation)</b>	Change specialty pay from a fixed dollar amount to 5% of base pay	No change.
<b>#5--Uniforms</b>	Raise uniform allowance from \$775 in 2009 to \$810 in 2010.	No change.
<b>#6--Wages</b>	3% raise over 2009 rates.	No change.

**APPLICABLE LEGAL STANDARDS**

It is generally recognized that in making their decisions interest arbitrators consider four categories of data:

1. Employer's ability to pay.
2. Internal equity
3. External (market) comparisons
4. Other considerations such as inflation rate, difficulty in hiring, etc.

Traditionally, wages have been compared externally because it is more of an “apples to apples” comparison to compare police wages in similar neighboring communities to one another than, for example, to compare police wages to clerk typist wages in the same community. For other valid reasons, it has been traditional and well accepted to compare “fringe benefits” like insurance contributions internally. This is partly due to the administrative necessity within a jurisdiction of uniformity in the insurance plans available to all employee groups. It is also due to the inherent difficulty of validly comparing the benefits between widely different insurance plans being offered in other communities to the plan in the subject community.

Another well established standard in interest arbitrations is that a party proposing a change to existing language should bear the burden of proving that there is a problem with the existing language and that the proposal is reasonable and necessary in order to fix the problem. An often cited corollary to this proposition is that an interest arbitrator should not impose on parties an agreement that they would not have reached in negotiations. This maxim, however, is of scant use to an arbitrator since, by definition, parties in interest arbitration were unable to reach agreement in negotiations. As the Union aptly stated in its post-hearing brief,

“No arbitrator can divine what the parties would have negotiated when they themselves cannot reach a settlement. Therefore, an arbitrator will need to impose a settlement using information and arguments supplied by the parties during the arbitration process.”

In addition to the requirements of the Local Government Pay Equity Act (“LGPEA”) concerning reasonable and equitable compensation relationships between male and female

dominated groups (Minn Stat. §§471.992 and 471.993), the Minnesota Public Employee Labor Relations Act (MPELRA) 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.” Minn. Stat. §179A.16, Subd. 7.

In these hard economic times it is increasingly common for public employers to rely primarily on affordability arguments to oppose all union proposals with any adverse cost impact. Public employers argue that even though they may have a present ability to pay the requested benefits without bankrupting themselves or violating legal budget or accounting restraints, to do so in this economic environment would have a serious deleterious effect on their planning for the future and on their ability to manage their affairs “efficiently.” In essence, the affordability argument has evolved from “we can’t pay it” to “we can pay it if we absolutely have to but it would be really imprudent to do so.” Necessarily, the financial and budget realities of the recession have had a significant effect on the weight to be given by interest arbitrators to the above factors and “affordability” has become the primary determining factor in most cases. Therefore, it is appropriate to undertake a general review of these data before analyzing the specific issues.

## **DEMOGRAPHIC FACTORS**

### **THE COMMUNITY**

Coon Rapids is a northern suburb of the Twin Cities, located in Anoka County. It has a population of approximately 63,000, an aging housing stock, and a median family income in 2008 of \$63,075.00. It is classified as a metro “slow growth” city. In 2008 it had a per capita tax capacity of \$1,022.00. Since January 1 of 2008, the taxable value of the community’s tax base has declined from 5.5 to 4.5 billion dollars. The city is fully developed and limited in its ability to raise

additional revenues. Like other cities throughout the state and nation, it is suffering from an unemployment rate significantly higher than the historical norm.

### THE BARGAINING UNIT

The City of Coon Rapids has four bargaining units - the police officers, the police sergeants, the public works group and the firefighters. This is in addition to a large nonunion group. This bargaining unit includes a total of fifty two individuals consisting of thirty-eight police officers and an additional fourteen officers on specialty pay assignments (investigators, K-9 officers, school liaison officers, etc.).

### PAY EQUITY CONSIDERATIONS

Coon Rapids is currently in compliance with the requirements of the Local Government Pay Equity Act and the parties are in agreement that an award of the Union's position to this male dominated police unit would not result in it being out of compliance.

### **SUMMARY OF ISSUES AND ARGUMENTS**

#### **1. INSURANCE – BY WHAT AMOUNT, IF ANY, SHOULD EMPLOYER INCREASE ITS CONTRIBUTION TO THE EMPLOYEE HEALTH INSURANCE PLAN? ARTICLE 18.1.**

##### **Relevant Contract Language**

The following language from the expired Collective Bargaining Agreement is at issue in this case:

All eligible employees shall be offered participation in the Employer's group insurance programs on the same basis as offered to the majority of other employees of the City. An eligible employee is defined as an individual who would be covered under the insurance coverage provisions of the City's personnel policies. For the term of this agreement, the Employer will make available and contribute toward group insurance on the same basis as the program in effect for a majority of the other active employees of the City.

### **Final Positions of the Parties**

The Union's final position was to amend this language to establish a specific Employer dollar contribution effective 1/1/2010 as follows: \$770.24 for single health insurance and \$1,317.13 for family health insurance and \$39.81 for dental insurance.

The City's final position was to retain the existing language.

### **Summary of Union Arguments**

1. The proposed language is necessary to prevent the City from "without warning or cause reduce their contributions by whatever amount they see fit as long as they do it for a majority of the other employees."

2. This year's City's proposal of no increase represents a deviation from the last five year pattern of the City increasing its contribution toward health insurance.

3. For reasons discussed more fully below, the City's affordability argument fails.

4. While only one other bargaining group has settled (the Fire Fighters), all other contractual language ties the Employer's contribution to either a majority of City Employees or Non-Union Employees. Therefore, an award of the Union's position will not necessarily result in any additional cost to the employer above the cost increase for this Bargaining Unit, as the Police Officers are neither non-union nor constitute a majority of City Employees. No contractual language would preclude the Employer from making similar offers to other Employees within the City. The Employer has an unrestricted ability to control the benefits offered to this other group of employees.

5. Finally, the most important reason the Union is seeking this position on insurance is to offset the increase in insurance costs. If the Arbitrator were to award both the City's position on

wages and insurance, then the Union members would effectively be going backwards in terms of overall compensation.

### **Summary of City Arguments**

1. Such a radical change on such an important benefit is to be avoided in arbitration – where new programs or concepts are not favored. The language that the Union is seeking to change on a one year agreement that is already well over half into its term has remained unchanged since at least 1998.

2. This is an issue that must be reviewed using internal equity as the principal guiding factor. Internal equity overwhelmingly favors maintaining the existing health insurance language. Although there are minor stylistic differences in the language in the other union contracts, the police sergeant and firefighter contracts provide the same basic language. This language has been continued forward into 2010 for the firefighter group. The public works group has similar language going forward – the difference being that it has a lesser health insurance contribution to go along with a dental contribution. It is also not an issue in the public works negotiations for 2010 – with the existing language in that agreement continuing in effect for 2010 and the only remaining issue involving overtime distribution.

3. Even if there was a problem with the approach that the parties have operated under for over a decade, a major change such as contemplated by the Union's approach should be considered only as part of a long term contract in which there is a transition to a new structure where the *quid pro quo* of such an important change can be addressed. The impracticality of such a change in a one year agreement is highlighted by the present case. The Union is seeking an identified dollar contribution as of January 1, 2010. By the time of the arbitration award, the year will be well over

one-half over. Any retroactive application of a health insurance premium would create difficulties with the pretax aspects of premiums and the post tax aspects of what would be a taxable payment.

4. The Union's proposal ignores the current change in health insurance programs across the country toward more employee/insured participation. Because premiums are driven, in significant part, by utilization, group insurance customers (including employers) have attempted to incent employees to be more judicious in their use of health care benefits. A key method to accomplish this is the creation of co-pay and deductible plans in which employees must decide whether the treatment they wish to have is "worth" the amount of any co-pay or deductible.

5. The change sought by the Union has a hidden cost. Section 18.3(D) of the collective bargaining agreement would apply this change to the retired employees. This clause would extend such a change to this broader group – increasing the expense to the City.

### **Discussion**

The Arbitrator feels that the Union has not carried what it acknowledged was its "heavy" burden of proof on this issue. As correctly noted by the City, the Union presented limited evidence on this issue – showing the City's contribution to health insurance premiums from 2004 through the present. This was not accompanied by any evidence showing what the total premium cost was for all of the City plans for this period. In other words, there is no evidence that the City's contribution has or has not "kept pace" with any premium changes for any of the City's plans.

The existing language has been in place since 1998 and reflects the principle of internal parity between employee groups for this benefit. The Arbitrator also notes the validity of the City's concerns concerning the practical implications related to moving to a set contribution, such as where the premium changes at a different point in the year, how such language would affect the

City's additional contributions to employees for completing on line assessments and age appropriate screening, and the additional contributions for employees in the HSA or HRA plans.

Finally, the Union's legitimate desire to eliminate uncertainty for employees is simply not possible. Health insurance is undergoing significant change as the dictates of the national health insurance legislation are applied over the next several years. This is, unfortunately, an area which appears to be in continuing flux for the foreseeable future.

The Arbitrator is sympathetic with the Union's position that it is effectively being deprived of collective bargaining on this issue by being locked into the plan offered to the majority of the City's other employees. This is particularly painful at a time when a wage freeze is being proposed and insurance premiums are escalating at an alarming rate. Nevertheless, the mandates governing interest arbitration compel the arbitrator to defer to the enormous difficulty faced by a public employer in administering diverse health insurance plans for different employee groups as well as the virtual necessity of offering all employees of the City the same insurance benefits. The Union's argument that its proposal does not preclude the City from treating other employee groups equally does have merit. However, as noted above, it poses complex administrative problems when applied in the middle of a one year contract term and deprives the City of the flexibility offered by the existing language. There is also insufficient cost data before the Arbitrator to justify the proposed award.

### **Award**

The position of the City is awarded. There shall be no change in the language of Article 18.1.

## 2. VACATION – VACATION SCHEDULE. ARTICLE 22.1

### Relevant Contract Language

The following language from the Collective Bargaining Agreement is at issue in this case:

1 through 5 years	10 days
6 through 10 years	15 days
During 11 <sup>th</sup> year	16 days
During 12 <sup>th</sup> year	17 days
During 13 <sup>th</sup> year	18 days
During 14 <sup>th</sup> year	19 days
During 15 <sup>th</sup> and subsequent years	20 days

### Final Positions of the Parties

The Union is seeking the following vacation schedule:

1 through 5 years	10 days
6 through 10 years	15 days
During 11 <sup>th</sup> year	16 days
During 12 <sup>th</sup> year	17 days
During 13 <sup>th</sup> year	18 days
During 14 <sup>th</sup> year	19 days
15 through 20 years	20 days
During 21 <sup>st</sup> year	21 days
During 22 <sup>nd</sup> year	22 days
During 23 <sup>rd</sup> year	23 days
During 24 <sup>th</sup> year	24 days
During 25 <sup>th</sup> year and subsequent years	25 days

The City's final position was to retain the existing language.

### Summary of Union Arguments

1. This is a fringe benefit which should be compared internally.
2. The Union's position represents the same vacation schedule found in the Labor Agreement between the City of Coon Rapids and the Teamsters, representing the public works employees. The Union's position is consistent with, at least, one other Bargaining Unit within the

City and therefore should be awarded.

### **Summary of City Arguments**

1. As a matter of internal equity, the vacation schedule currently in place for the police officers is the same vacation schedule that applies to the Police Sergeants. It differs from the vacation schedule applicable to the firefighters who have their vacation defined as based on 24 hour shifts.

2. The Public Works group is not an essential group and therefore had to negotiate this change in the vacation schedule through the normal give and take of negotiations. Simply awarding it to the police officers without any *quid pro quo* is not appropriate.

3. Although this is primarily a benefit issue that must be compared internally, reference to external comparables also does not support the Union's position. The City presented an exhibit that established 7 of the 22 other comparable cities in the former Stanton Group 5 group utilize a similar 160 hour maximum based on 14-16 years to the maximum rate. The City noted this is by far the most common maximum accrual and approximate years to the maximum rate in this external market. The City conceded, however, that the use of external comparables when dealing with a vacation issue must be qualified. Traditional sick and vacation leave is no longer a universally utilized program. A number of cities, including cities in the Stanton Group 5 comparable including Coon Rapids, utilize combined vacation/sick programs. Whether titled personal leave or flex leave, these benefits cannot accurately be compared to the traditional programs. Accordingly, seeking to establish an external market "average" is no longer feasible

### **Discussion**

The City has framed much of its argument on this issue as the difference between the rights

of employees with access to arbitration as compared to employees who do not have access to arbitration. It argues that the vacation schedule the Union is seeking was negotiated into the Public Works collective bargaining agreement through the traditional give and take of bargaining. In contrast, the Union is asking the arbitrator to simply grant it to this bargaining unit without resort to the usual *quid pro quo* process. It alleges that “[G]ranted arbitration eligible groups the best selection of benefits offered in a city elevates these employees to a preferred status and is to be avoided.”... It should not be the standard in arbitration.” Finally, the City states:

“The better approach is the party proposing to change the existing language bears the burden of showing the need for the change or a “quid pro quo” for the change. In the present case, the Union has not offered any trade for this enhanced benefit. Accordingly, the issue is whether there is a “need” for this enhanced benefit. As noted above, reference to internal and external comparables does not support granting this benefit.”

The Arbitrator is not persuaded by the City’s arguments on this issue. As a first matter, the Union is not seeking a preferred position based on its “privileged” status as a group of essential employees. On the contrary, it is seeking a benefit already being enjoyed by a group of “non-essential” employees. Second, although it is true that the Public Works employees may have given a *quid pro quo* in bargaining for this benefit, there is no way to know this with any certainty. This is always the case in interest arbitration. The City’s argument, if carried to its logical conclusion, would preclude interest arbitrators from *ever* granting new benefits to employee groups. Thirdly, the City cannot have it both ways on internal comparisons for fringe benefits. For example, this bargaining unit did not participate in bargaining over the insurance benefit being given to a majority of the City’s other employees. It seems to this Arbitrator that one cannot fairly argue that it is all right to lock members of this bargaining unit to the insurance contributions being made to other employee groups and at the same time preclude them from enjoying a benefit given to one or more

other bargaining units on the grounds that it wasn't bargained for or that no *quid pro quo* was given.

For the reasons stated by City itself, the Arbitrator has not given much weight to external data in arriving at his decision on this issue. Rather, he has based his decision primarily on considerations of internal equity. In doing so, the Arbitrator has disregarded the vacation schedule of the firefighters who have their vacation defined as based on 24 hour shifts. This is a significant enough difference to make an accurate comparison between these groups on this issue virtually impossible. This leaves only the Police Sergeants as a comparable unionized group without this benefit. The Arbitrator is troubled by awarding police officers a benefit not currently available to the sergeants . On the other hand, cities traditionally stress the desirability of internal uniformity for fringe benefits between employment groups, and the Public Works employees do have this benefit. Also, although no cost data on this benefit were presented to the Arbitrator, it appears to be a benefit which, if awarded, would not have a significant adverse financial impact on the City.

The issue is a close one. However, in balance, and based on the above analysis, the Arbitrator feels that the Union's proposal on this issue is both reasonable and affordable and should be granted.

### **Award**

The position of the Union is awarded. The changes proposed by the Union to Article 22.1 shall be incorporated into the new Collective Bargaining Agreement.

**3. SPECIALTY PAY – BY WHAT AMOUNT, IF ANY, SHOULD EMPLOYER INCREASE THE SPECIALTY PAY? ARTICLE 27.1**

**4. SPECIALTY PAY – BY WHAT METHOD SHOULD SPECIALTY PAY BE COMPUTED? PERCENTAGE/SPECIFIC DOLLAR AMOUNT. ARTICLE 27.1**

The following language from the Collective Bargaining Agreement is at issue in this case:

Employees classified or assigned by the Employer as an investigator (detective), school liaison officer, K-9 officer, or to a community oriented policing and problem solving (COPPS) position shall receive \$260 per month (prorated when appropriate) in addition to their regular wage in the year 2007, \$270 per month in 2008, and \$280 per month in 2009. Assignment to the COPPS position is not a promotion. Assignment to this position and length of service shall be in the sole discretion of the Employer.

### **Final Positions of the Parties**

The Union's final position was to either increase the amount to \$290 per month (Issue #3) or amend the reference to make the amount five percent (5%) (Issue #4).

The City's final position was to retain the existing language with the exception of removing the obsolete date specific references and amounts.

### **Summary of Union Arguments**

1. The ten dollar increase is consistent with the proposed three percent (3%) wage increase. In the alternative, moving to the five percent (5%) differential would be consistent with what has been done in the past.
2. Arbitration precedent supports the Union's position. In a 2003 arbitration award between these parties, the Arbitrator recognized that Specialty Pay, when taken as a dollar amount, erodes after time. Secondly, the Arbitrator's award amounted to an additional five percent of top patrol.
3. In the instant case, the Union's alternative position (to establish a 5% differential for specialty pay) on the issue is preferred. This position recognizes what the parties have negotiated and what the arbitrator established in the 2004 contract. However, without a language change, then the dollar amount should be increased assuming the Union's position on wage is awarded, in order to keep up with the 5% differential.

## **Summary of City Arguments**

1. Increasing the existing specialty pay amounts is not supported by internal equity. It is not provided for in the Police Sergeant contract. The firefighters receive specialty pay for being on the Chemical Assessment Team, the Anoka County Fire Investigation Team and the Specialized Rescue Team. This amount is \$60/month for 2010 which is less than one-third the specialty pay amount that the equivalent police officers receive. The Public Works employees receive lead person differentials of \$1.00 per hour and monthly specialty pay for special certifications in amounts ranging from \$25/month to \$60/month. No other bargaining unit members at the City receive anything approaching the existing amounts provided to the police officers. None of the differentials exist as a percentage.

2. As a matter of internal equity, the most important consideration for the arbitrator is the recognition that the Police Sergeants have their pay established at twenty-two percent (22%) above top patrol. Specialty pay in the current amount of \$280 per month represents approximately 5% of the 2009 top hourly pay. Any increase to this amount further reduces the differential between the officers and their supervisors.

3. The Union's requested change to the specialty pay differential is not supported by external market considerations. Reference to the Stanton Group 5 comparable cities reveals the average differential is \$225.38. This compares to the \$280 already in place in Coon Rapids.

4. Reference to these comparables reveals that only 5 cities – Cottage Grove, Eagan, Fridley, Lakeville and Maplewood – use the percentage approach sought by the Union. Every other city in the comparable group utilizes an established dollar amount. The number of cities using a percentage approach sought by the union is not a significant number and does not reflect a trend.

## **Discussion**

The Union's proposal is not supported by either internal or external comparables. Tying the differential to the pay rates (with increases automatically built in when there is a pay increase) represents a change in approach to this compensation which is not established as the norm in the external market. The existing differential exceeds that in other Coon Rapids positions and exceeds that paid in the external market. Accordingly, the Arbitrator has determined that the Union has not carried its burden of proof on this issue.

## **Award**

The position of the City is awarded. There shall be no change in the language of Article 27 other than the deletion of obsolete language referring to dates which have already passed.

### **5. UNIFORMS – BY WHAT AMOUNT, IF ANY, SHOULD THE UNIFORM ALLOWANCE BE INCREASED – ARTICLE 20.1**

The following language from the Collective Bargaining Agreement is at issue in this case:

Employees shall be reimbursed for maintenance and replacement of uniforms in the amount of \$675 in 2007, \$725 in 2008, and \$775 in 2009. Payment of this amount shall be made in conjunction with the second pay period in the month of January of each year.

### **Final Positions of the Parties**

The Union's final position was to increase this amount by 4.5% to \$810 in 2010.

The City's final position was to maintain the existing amount and eliminate the obsolete language.

### **Summary of Union Argument**

The Minnesota "Buy American" statute (Minn. Stat. Sec. 181.986) was passed in the 2009 legislative session. It requires public employees to buy American made uniform items, if they are

available. The Union's position on this issue accounts for increased costs due to the new legislation. American made clothing/uniforms will come with significant increased cost to those items made overseas. Admittedly, there is some confusion about the new statute and its interpretation but it must be complied with. Therefore, to offset the increased cost, the Union's position should be awarded.

### **Summary of City Arguments**

1. Internal equity does not support the Union's request. The existing uniform allowance for police sergeants is the same \$775 currently in effect for the members of this bargaining unit. The uniform allowance for firefighters is \$400 - much less than that afforded to the police officers and police sergeants. . The clothing allowance for the public works employees is also much less - \$315 (\$365 for mechanics).

2. The Union's request is not supported by consideration of the uniform allowance paid among comparable cities. Reference to the Stanton Group 5 cities reveals 10 of the 22 other cities do not provide any uniform allowance – rather the uniform is provided. Of those cities that still provide a uniform allowance, the average allowance is \$768.85. Id. This compares favorably with the \$775 currently applicable to the Coon Rapids police officers.

3. The Union did not provide any data identifying a specific cost increase resulting from this law. For example, the union did not identify the cost of a pair of work pants before and after this law was passed. Accordingly, the Union's argument at this point is simply speculation. Particularly in a one year agreement, as here, there is no need to act upon speculation on this differential. When more evidence is provided on the impact of this law in future years, it may then become a more important consideration.

4. The current uniform allowance is an amount that is simply paid to an employee with no need for an employee to actually purchase uniform items with this amount. In such an instance, the arbitrator should not increase the amount unless the Union is able to demonstrate the current allowance is insufficient to meet the actual needs of the officers. Where the contract does not indicate the employee must provide the City with receipts, the City has no way of knowing whether the amounts are actually being spent for required or needed uniform items. Accordingly, it is the City rather than the Union that is not able to provide the necessary proof associated with this request.

In instances like Coon Rapids, where the amount is simply paid, there is also an easy method to increase the actual amount of money that can be used by the police officer. That solution is to require employees to provide receipts associated with the purchase.

### **Discussion**

The Arbitrator believes that uniform allowance is a component of compensation rather than a fringe benefit. As such, it is appropriate to compare it externally. Also, internal comparables seem less relevant than external ones because of the obvious differences in the composition and cost of Public Works and Firefighter uniforms from those of Police Officers. Indeed, the City concedes that this differential “is likely the result of lesser uniform and equipment needs.” Accordingly, the Arbitrator has given little weight to the Uniform Allowances given to other Coon Rapids employee groups except the Sergeants. This group currently receives the same amount as the Sergeants. However, the Sergeants are not settled for 2010 so there is no way to compare this benefit meaningfully.

The City argues that there is no internal inequity that must be corrected by an increase to the

officers and that granting an increase to this group would likely require the City to adjust the Sergeants uniform allowance – making arbitration the leader in granting benefits rather than taking the role of assuring that inequity does not occur within a contractual benefit. This may well be the case but it may also be an unavoidable result of the process of interest arbitration. If a benefit is justified either inherently or by external comparables, it should not be denied because of the effect it may have on other groups.

Reference to external comparables is inconclusive. Ten of the twenty two other cities do not provide any uniform allowance – rather the uniform is provided. Accordingly, they are of no use in making comparisons. Of the other twelve cities that still provide a uniform allowance, the average allowance for 2009 was \$768.85 compared with \$775 currently applicable to the Coon Rapids police officers. 2010 data were only available for five of these cities with four showing no increase in uniform allowance and one, Maple Grove, increasing from \$805.00 to \$820.00.

There is much common sense in the City's argument that a Uniform Allowance should be based on actual expenditures rather than a blanket amount. However, this is not an issue before the Arbitrator. Presumably, there is a bargaining history in which the agreed to amounts bore a real relationship to the average amounts actually expended by officers for uniform maintenance and replacement. It is fair to presume that if the City felt that the allowance was being abused and not used for its intended purpose, it would have bargained for a system where the City either provides and replaces the uniforms directly or reimburses officers for actual expenditures upon presentation of appropriate receipts. It has not done so. In any event, language changing the system was not part of either party's proposals, was not certified at impasse, and is not properly before the Arbitrator for his consideration.

Limited evidence was presented on the increased cost of uniforms as a result of the new legislation. The Union offered a November 2009 e-mail from a vendor that stated that they were “still in the early stages of figuring out what this will mean to the industry as a whole, but [I] would expect costs to rise significantly.” The vendor estimated that pricing on uniform items could be expected to increase from 25% to 40% depending on the item or garment. It is hard to see at this stage what other type evidence the Union could have presented on increased costs. The Union does have the burden of proof but the burden should not be interpreted in such a way that it is literally impossible to meet. The Arbitrator believes that the evidence which was presented is enough to remove the question of increased uniform costs out of the range of pure speculation and into the area of near certainty with only the precise amounts to be determined.

The Uniform Allowance was increased by \$50 in each of 2008 and 2009. The Union proposal of a \$35.00 increase for 2010 seems reasonable, especially in light of the probable effect of the “Buy American” statute.

### **Award**

The position of the Union is awarded. The changes proposed by the Union to Article 201 shall be incorporated into the new Collective Bargaining Agreement. The increased amount shall be payable promptly after the issuance of this Decision.

### **6. WAGES – BY WHAT AMOUNT, IF ANY, SHOULD WAGES BE INCREASED?**

The following language from the Collective Bargaining Agreement is at issue in this case:

#### 2007 Wages

Effective January 1, 2007, employees will receive a 3% base wage adjustment and a 1% market rate adjustment, which will be added to the December 31, 2006 range minimums and maximums. Employees will be eligible for step movement on the same basis as in 2006. Employees hired after March 1, 2007, will start at the hourly

rate of the four-step wage schedule in Appendix A.

### 2008 Wages

Effective January 1, 2008, all employees will receive a 3% base wage adjustment and a 1% market rate adjustment, which will be added to the December 31, 2007 range minimums and maximums for both the 8-step and 4-step pay schedule. Employees will be eligible for step movement on the same basis as in 2007.

### 2009 Wages

Effective January 1, 2009, all employees will receive a 2% base wage adjustment and an additional 2% base wage adjustment, effective July 1, 2009, which will be added to the December 31, 2008, range minimums and maximums of both wage schedules. Employees will be eligible for step movement on the same basis as in 2007.

This Appendix is hereby incorporated into and is made a part of this 2007-2009 Labor Agreement.

The applicable pay ranges and agreed upon increases in those ranges are attached hereto as Appendix A.

## **Final Positions of the Parties**

The Union's final position was to increase the wages by three percent (3%).

The City's final position was to continue the current wages but permit step movement on the same basis as the prior agreement.

## **Summary of Union Arguments**

### 1. Ability to Pay.

The Union recognizes the current economic condition for the state and most communities is tumultuous. However, when considering the ability to pay one must look specifically at the Employer. The only reliable budget data presented during the hearing was the 2009 City of Coon Rapids Comprehensive Annual Financial Report. This report is the only evidence based on "hard"

or “real” numbers, confirmed by an independent auditor.

The cost of the Union’s wage proposal is \$104,780.52, assuming all officers are at top pay, which they are not. The City’s assets exceeded its liabilities by \$282.4 million, with \$63 million available to meet the government’s ongoing costs. The City’s long-term investments of 6-10 or more years were \$32,105,022, and its short-term investments of 1-5 years were \$38,437,348: totaling \$70,542,370 for 2009. The Union’s proposal represents just 0.002% of the City’s investments, alone. In addition, the City’s unreserved and undesignated General Fund balance was \$11.5 million or 49.8% of the total General Fund, well within the State Auditors accepted range. The General Fund has an undesignated amount of \$11,500,000 that could be used to supplement the budget in the amount of the Union’s position, should the Arbitrator award it. There is arbitral precedent that a City’s ability to pay should not be diminished by maintaining an excessive percentage of the General Fund expenditures in its General Fund balance.

Finally, the impact on the Employer, should the Arbitrator award the Union’s position is relatively insignificant. A reallocation of 1.7% in budget should be simple and that is the worst case scenario assuming no additional revenues are created. If no increase in revenues occurs, then the funds described above have more than enough money to cover the increase cost of the Union’s position. Even if the Employer can demonstrate there is no additional money in the budget to pay the Union’s request, which it cannot, the Union should not bear the entire burden:

## 2. Internal Equity

The City admitted that it would not go out of pay equity compliance in the event that the Union’s final position was awarded. If market adjustments are considered, the City has not shown a consistent pattern of wage increases. There is no internal pattern. The City has attempted to show

an internal equity pattern of 0% COLA for the City in 2010. This is somewhat misleading and inaccurate. Only one labor group has settled its contract with the City: the Fire Fighters. While they accepted a 0% COLA, they also accepted a one time lump sum payment of \$600. The Arbitrator must look at the other factors, particularly the external market, before defaulting to the City's alleged pattern and forcing low wages onto the officers because only a few employees were early to settle.

### 3. External Comparables

The proper comparison group are the cities that comprised the former Stanton Group 5, focusing on top wages in reviewing the external market data. The City has been near the external market average in 2008 (at .05% below average) and in 2009 (at 1.4% above average) ranking 5<sup>th</sup> in population. If the Union proposed 3% increase were awarded and the Arbitrator looked at the settlements of 11 of the 24 other cities (13 are not settled), the top rate for Coon Rapids would increase to 1.16% above average as part of its "slow climb" upward in the market. In contrast, the City's proposal would result in the City top pay being 1.79% below the average of these 11 early settling cities.

Assuming no increase for the unsettled cities, the ranking of Coon Rapids would move from position 8 or 9 (where it was in 2008 and 2009) to 5<sup>th</sup> position if the Union's position were awarded. Using the same assumption, the City's proposal of no increase would drop it to 12<sup>th</sup> position.

### 4. Other Economic Factors

The Consumer Price Index – All Urban Consumers for Midwest cities having population between 50,000 and 1.5 million increased by 2.9% in May 2010 compared to May 2009. The last seven months have shown increases in the CPI-U of 2.3 to 3%. The Union's wage increase should

be awarded to ensure the wages of the bargaining unit maintain pace with increases in the cost of living. Many arbitration awards have granted wage improvements based, in part at least, on the application of the cost-of-living standard.

### **Summary of City Arguments**

#### 1. Economic and Budget Considerations

The traditional “ability to pay” concept includes considerations beyond the simple question of whether an award would bankrupt the employer. The more appropriate consideration is that economic and financial concerns warrant serious consideration. This standard is whether the award would be most consistent with the City’s ability to “efficiently manage and conduct [its] operations within the legal limitations surrounding the financing of these operations

Nationally, the hope for a “recovery” has been tempered by the likelihood that businesses and government are likely to reduce (rather than increase) spending in the second half of 2010. The economic crisis has a particularly negative impact on workers. Total nonfarm payroll employment declined by 125,000 jobs in June 2010 according to the Bureau of Labor Statistics and in June there were 14.6 million individuals unemployed. The unemployment rate was still at a staggering 9.5%. The same negative effect was felt in both hours and wages. In June, the average hourly workweek for all employees on private nonfarm payrolls **decreased** by 0.1 hour to 34.1 hours. Average hourly earnings of all employees in the private nonfarm sector **decreased** by 2 cents, or 0.1 percent. The national economy, particularly as it affects employees, is dire.

The State of Minnesota faced a \$3 billion deficit in the 2010 legislative session. The final budget passed by the legislature ratified the \$2.7 billion of un-allotments made by the Governor last summer (including un-allotments to local government aid and market value homestead credit). LGA

and MVHC were cut by \$52 million in a first supplemental budget bill. With the final budget bill passed, the state budget is now in balance, but cash flow challenges over the interim could precipitate a future special session or further un-allotments by the Governor. In any case, the final budget agreement contained no structural budget fixes, and the state will face potentially significant future deficits.

This situation has had a profound negative effect on Minnesota cities. The League of MN Cities has determined that cities of every size, in every region, will be “broke” by 2015 if no policy changes are made. By the year 2025, metro slow growth cities like Coon Rapids would see deficits in excess of 30% of city revenues. This is not permitted to happen by law as cities must balance their budgets. The result is the necessity of a combination of service cuts and property tax increases. The huge deficits of the State will continue to impact cities like Coon Rapids. With no prospects of the State addressing its own budget problems, Minnesota cities will continue to be burdened to the point where existing service and funding levels are no longer sustainable or realistic.

As a fully developed city (also known as a slow growth city), Coon Rapids fully participated in the un-allotment process by the State. In 2002, the City received \$2,318,548 in local government aid. This amount was down to \$225,000 in 2010. This was not actually aid from the State but was the repayment of amounts expended for a bridge that the City built. It will be zero in 2011.

In terms of per capita tax capacity – which represents the ability to pay vs. value – the City in 2008 had a low \$1,022. As a fully developed slow growth city, its 2008 median household income of \$63,075 and per capita income of \$27,839 was well below the growing cities such as

Blaine, Burnsville, Eagan, Maple Grove and Plymouth. Coon Rapids, because of its fully developed makeup has been challenged in its ability to meet its obligations to a much greater extent than the growth cities in the metro area since the start of the national, state and local economic downturn.

Since 2008, the City of Coon Rapids has experienced a precipitous drop in taxable value. The percent of property wealth as compared to the metro average continues to slide – from over 78% in 2004 to less than 75% in 2010. Its tax capacity has remained fairly stagnant since 1999. General property taxes as a percentage of total revenues have gone from less than 40% in 1999 to approximately 70% in 2010. Intergovernmental revenue as a percentage of total revenues has plummeted from approximately 35% in 1999 to less than 6% in 2010.

The City's fund balance policy of 45% is within the 35%-50% noted in the State Auditor's position on this issue. Given the instability in the City's funding sources – particularly the state aid cuts and the limitations on the City's ability to raise revenue going forward, this should not be viewed as a potential source of funding an ongoing expense such as a general wage increase.

## 2. Cost of Living

The amount of change in the cost-of-living has a limited application in the present arbitration because of the significant volatility in the economy. This factor should primarily serve as a "check" that an employee's wage increases have been sufficient to sustain the cost of living over time. The City has provided this group 23-26% increases compared to the 17.8% increase to the CPI between 2003 and 2009. The City also provided employees with a two percent increase in January of 2009 and another two percent increase in July of 2009 despite the fact that the CPI was negative.

Because the CPI includes the highly inflationary health insurance premium, the CPI is something of a skewed measurement for general adjustments to wages. Because the collective bargaining agreement has a separate (and established) contribution for health insurance for each year, the CPI generally represents a greater inflationary amount than actually experienced by the members of the bargaining unit. Accordingly, the general increase in the current situation should not be viewed as a target or precise measurement.

### 3. Internal comparability

The male dominated classifications at issue in the arbitration are already above predicted pay pursuant to pay equity. The police officers are compensated at \$36.86 above the predicted pay amount. The specialty pay positions are \$142.91 above the predicted pay amount. An arbitrator's statutory duty to consider the equitable compensation relationship standards does not extend to moving male dominated classifications farther ahead of predicted pay than they currently enjoy.

In terms of other groups, the nonunion employees did not receive a general increase. This nonunion group is particularly significant in that it includes all of the female dominated positions at the City. The City argued the firefighters settled their 2010 contract without a general increase. The City noted this comprises 125 of the 225 full time employees at the City. The City Manager noted the Public Works group only has one open issue – use of seniority in distributing overtime – and that group is no longer disputing that it will not receive a general increase for 2010. Including the 41 Public Works employees into this comparison reveals that 166 of the 225 employees at the City will not be receiving a general adjustment for 2010. The 7 sergeants waiting for the outcome of this arbitration and the employees in this bargaining unit are the only ones not settled for 2010.

#### 4. External Comparisons

The City agreed with the Union that the former Stanton Group 5 cities form the best external comparison group. The City argued the arbitrator should not utilize average increases to determine what is the relevant position of the external market. The City argued that in performing an external market review, it is important to note that such a review does not (and should not purport to) give a precise measure. Because of multiple year contracts, year to year measurements are not accurate. For example where an external market city enters into a three year agreement that is “front loaded” (a greater increase in the first year that is offset by a lesser increase in the third year) or “back loaded,” (the opposite) that comparable may differ significantly from year to year depending upon whether the focus is on a year in which there is a greater or lesser percentage applicable. Use of “split” adjustments also provides misleading data. While a 2% general increase in January and an additional 2% general increase in July may result in a 4% (approximate) range adjustment, the compensation is only 3% for the year.

The City also argued that another commonly used wage adjustment tool, the market rate adjustment, renders comparables even more inaccurate in any given year. In a market rate adjustment, a jurisdiction may be choosing to change its relative position within the market or it may be choosing to maintain its existing position. Simply ignoring a potential effort to change its position within the comparison group by granting the same increases to the other jurisdictions creates a “boot strapping” effect in which the original jurisdictions efforts are thwarted. In addition, a market rate adjustment may use a number of different approaches to implementing such a change to limit the actual cost or impact of the change – such as expanding ranges but placing employees at a level within the system that results in listed salary maximums that are not actually paid until

several years later. In each of these instances, there may be a significant variation in actual salaries paid in other jurisdictions in any given year as well as variations in terms of general wage percentages provided in each year. Accordingly, precise market positions cannot be accurately stated - particularly at any given period of time.

The City also argued interest arbitration is also not an appropriate tool for “fine tuning” market position to match average general increases among the comparable group. General increases among comparable groups are subject to wide variations and rationales. This is particularly true in the present where settlements prior to October 2008 did not reflect the current economic realities.

Within this caution and limitation, only 9 of the 23 reporting cities in the former Stanton Group 5 have settlements for 2010. Out of the nine 2010 settled municipal contracts, eight were multiple year contracts, and the majority of those were multi-year contracts ending in 2010. Accordingly, there is not sufficient data for the arbitrator to make an external market based analysis.

Absent an external wage pattern, external data is relevant only to the extent it demonstrates a significant decrease over the relevant time period that would adversely affect recruitment and retention. The City has maintained its external market position.

In 2004, the City ranked 7<sup>th</sup> of 22 cities based on top wage with longevity. In 2005, it ranked 7<sup>th</sup>. In 2006, it ranked 8<sup>th</sup>. In 2007, it ranked 7<sup>th</sup>. In 2008, it ranked 8<sup>th</sup> with the addition to two cities. In 2009, it ranked 8<sup>th</sup> with the addition of Minnetonka. Reference to these amounts show there is a small dollar difference among a number of cities close to Coon Rapids in this ranking.

External comparables should be used by an interest arbitrator as a general determination of

history rather than a mechanism to improve market position that has been consciously changed by other entities. Interest arbitration is not an appropriate tool to advance market position over comparable counties.

A better test of external comparables starts with the premise that employees are rational. It presupposes employees are able to compare their wage and benefits package as a group and, if it is acceptable stay with the City. Conversely, if the overall compensation package is poor, there is employee turnover. Based on this approach, the City argued that its compensation system is within market parameters. The City pointed out in the past five years, the City has not experienced any wage related turnover in this bargaining unit. The stability of this workforce demonstrates equitable compensation more accurately than any statistical analysis of comparable jurisdictions. The City noted it is acceptably positioned within the unstable external market for 2010.

### **Discussion**

The legislature has established standards that interest arbitrators must use when resolving wage and salary issues. Minn. Stat. Sec. 471.992, Subd. 2 (2010). These standards apply in the present case because the classifications at issue are male dominated as that term is used in the pay equity law. This task is simplified in the present case because there are no employee objections to the City's pay equity study. There is also agreement among the parties that the City will remain in compliance with the pay equity act by awarding either the City or Union positions.

Both the City and the Union addressed the same issues in the interest arbitration. Both parties spent the most time arguing the economic effects of their proposals but also noted cost of living considerations, internal equity and external comparables. Consideration of these issues is as follows:

## THE EMPLOYER'S ABILITY TO PAY

### **1. Economic considerations.**

The City has presented a thorough and cogent discussion of the dire situation in the state and national economies and its likely future adverse impact on Coon Rapids resulting in decreasing home values and incomes, limited revenue sources, likely significant decrease in Local Government Aid from the State, etc. The impact of these arguments on the Arbitrator's decision in this matter compels some discussion and analysis.

As a first matter, the Arbitrator does not feel that widespread national unemployment and wage depression is a valid reason to deny this group a raise if the evidence establishes that it is entitled to one. Although economists might differ on this, raising wages in a period of high unemployment and recession has the effect of putting more disposable income in the hands of consumers and helps fight a deflationary cycle which stifles economic activity and growth. This is, of course, no reason in and of itself to grant a wage increase. However, the Arbitrator does feel that it negates that particular argument of the City.

The City has also pointed out numerous adverse economic factors adversely effecting the future revenue of this Community. The Union did not refute these statistics nor does the Arbitrator have any reason to doubt their general accuracy. The one thing that all these factors do have in common, however, is that they are predictions about future events (e.g. the level of future LGA) and to that extent are necessarily speculative. There is reason to believe that the immediate economic future will probably be difficult, but no one can predict with any certainty how long this recession will last. Therefore, although cities must necessarily be prudent and save for the future, forecasts of economic doom in five years are simply forecasts and it is impossible to judge their accuracy. The

Arbitrator has weighed these factors in reaching his decision, but at the same time has given primary importance to the *present* economic situation of the City. Without repeating all of the data summarized in the Union's Arguments, *supra*, the Arbitrator is persuaded that the City has the present ability to pay a wage increase to this group consistent with its obligations under Minn. Stat. §179A.16, Subd. 7. to efficiently manage its operations.

## **2. The Fund Balance Issue**

In the present case, Coon Rapids is within the 35%-50% guideline established by the State Auditor, albeit at the high end.. It has a policy of setting this amount at 45% although the City is already planning on reducing this to 42% for 2011.

Arbitrator Richard Miller recognized in **City of West St. Paul v. Law Enforcement Labor Services**, BMS 09-PN-1062, (Miller, 2010) that a City's ability to pay should not be diminished by maintaining an excessive percentage of the General Fund expenditures in its General Fund balance. However, unlike here, in that case the City maintained a 54.5% Fund Balance which was in excess of the state guidelines.

The City argues that it is particularly appropriate to maintain the present "minimum level" because the City's prior financial resources from property taxes are based on declining property values and state aids are quickly diminishing or vanishing. The City also argues that it is important to consider that the fund balance is utilized as a means of emergency borrowing. and it is also considered in establishing a bond rating, which is used to determine the City's cost of borrowing.

As noted above, the Union believes that granting its entire request will have only a negligible effect on the Fund balance.

In reaching his decision, the Arbitrator has considered the impact of his Award on the City's Fund Balance and believes that it will not have any significant adverse effect on the issues raised by the City.

### **COST OF LIVING**

In the present case, from 2003 through 2009, this group has received 23-26% increases compared to the 17.8% increase to the CPI during this time. As noted above, the parties have maintained position compared against the CPI in the short term where the employees received a two percent increase in January of 2009 and another two percent increase in July of 2009 despite the fact that the CPI was negative. This resulted in an effective 3% increase for the year during which the CPI changed by a negative 0.6%. The increase in the applicable CPI for 2010 appears to be in the neighborhood of 3%. However, if one factors in the "overpayment" in 2009, the Union has already been compensated for the increase in the CPI since January 1, 2009 with no wage increase. Accordingly, the Arbitrator has not considered this factor in arriving at his decision.

### **INTERNAL COMPARABILITY**

The City argues that where other groups have negotiated a wage settlement internal considerations should be given primary weight. This is particularly true where the groups with settled agreements represent the female dominated classifications as that term is used in the pay equity statutes. Arbitrators should be extraordinarily hesitant to grant greater increases to male dominated classifications unless there is a significant reason to do so that outweighs the statutory directive of considering gender equity. This position also recognizes the primary importance that negotiated settlements should play in establishing standards as opposed to arbitrated results.

On the other hand, the Union argues it should not be “deprived of the right to negotiate” a different amount and that strict adherence to a pattern deprives them of the right to bargain over wages.

In the present case, the bargaining units in Coon Rapids are in varying stages. The essential firefighters bargaining unit is settled and did not receive a general increase for 2010. This is consistent with the large nonunion employee group. The City and Public Works employees have negotiated (and each has ratified their agreement) to the same point – no general increase for 2010 on wages. What sets the Public Works group apart is that there is a continuing disagreement on whether the (ratified) agreement included a change in how overtime is being distributed. This leaves only the present group and the 7 member police sergeants group open on wages.

The Arbitrator has previously noted that he is not inclined to give much weight to internal comparisons in making an award on wages. There are a variety of reasons for this traditional and well accepted principle, not the least of which is the adverse effect on collective bargaining that such an approach has within a jurisdiction because of the emphasis it places on the order in which wage settlements are reached with different employee groups. Arbitrator William Martin was correct when he wrote:

“While internal comparisons are important, they should not be controlling in every case. To do so would not be to elevate negotiation as the principles of PELRA require. Rather it would permit employers to dictate wage increases whenever the Union has for some period of agreed to employer internal patterns. PELRA does not intend to replace negotiation with Interest Arbitration, but neither does it intend to use interest arbitration to freeze patterns set initially by employers.”

Law Enforcement Labor Services v. City of Mendota Heights, BMS 01-PN-968 (2001)

At the end of the day, however, the primary reason for placing little weight on this factor is that expressed by Arbitrator John Boyer when he explained why the marketplace should be

considered above internal patterns:

. . . the singular compelling similarity between the units is a common Employer. Clearly unit personnel do not share the same or even substantially similar duties, hours, shift schedules, risks on the job, licensure requirements, public scrutiny, exposure to injury, continuing education and training requirements, unpredictability of work environment and/or equipment maintenance issues, etc., and such incontrovertibly justifies the differentiation in duration of the Agreements, and such is also reflected in the Award for Holiday Premium Pay and Wages below.

Law Enforcement Labor Service, Inc. v. City of Belle Plaine BMS 06-PN-479 (2006)

### **EXTERNAL COMPARISONS**

The parties agree that the appropriate external comparisons are the former Stanton Group 5 cities. There are limited 2010 settlements for this group. The City lists 9 settlements for 2010. The Union lists 11 but that list includes non-metro city St. Cloud and nonunion Eden Prairie.

Both parties acknowledge Coon Rapids is near the market average at the top rate and the Union did not present any evidence expressing a concern for compensation at the start rate. The City calculations showed Coon Rapids at approximately 1% above average depending upon whether top base or top with longevity is considered. The City calculations showed a similar position going back to 2004. The Union calculations included St. Cloud and showed the City being 0.05% below the top rate in 2008 and 0.14% above the top rate average in 2009.

The parties' difference in their view of relative rankings is primarily based on the fact the Union utilized top base rate whereas the City utilized top wage with longevity included. The City viewed its relative ranking as between 7<sup>th</sup> and 8<sup>th</sup> from a historical perspective. The Union viewed the relative ranking as 8<sup>th</sup> in 2008 and 9<sup>th</sup> in 2009. In either instance, the parties presented evidence

that Coon Rapids is within the same general vicinity in terms of compensation relative to the former Stanton Group 5 cities whether in terms of averages or relative rankings.

Market averaging is not a perfect approach to making external comparisons since there will always be a top, bottom, and average; and once the market tightens up enough this will result in comparing pennies rather than dollars. Another approach is to establish a rank based on top pay and attempt to keep the rank consistent from year to year. Again, this approach is not perfect unless the market stays tight within a reasonable dollar range.

According to the Union data, the City's offer will drop the officer's pay in 2010 to \$101.82 or 1.79% below the market average. The Union's position, if granted, would move the officer's pay in 2010 to \$66.10 or 1.16% above the market average. The City's offer will also drop the top pay rank to 12th, while the Union's position will raise them to 5<sup>th</sup> in the comparison group.

As noted above, there are problems in both methods and application of external comparables can simply not be done with mathematical precision. There are problems with the size of the sample group and whether or not longevity pay should be included or excluded in the comparison. Notwithstanding these difficulties, the Arbitrator feels it is appropriate and within the City's ability to pay to make a wage adjustment which will keep this Union closer to the position they have historically occupied in relation to the comparison group than the offer of the City would do.

### **AWARD**

For the above stated reasons, the Arbitrator awards the Union a 1% pay increase for calendar year 2010. Effective January 1, 2010, the wages in Appendix A-A1 shall be increased by 1% over 2009 rates.

Respectfully Submitted

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Stephen A. Bard, Arbitrator