In Re the Arbitration between:

City of Shakopee, Shakopee, MN,

Employer,

and

Law Enforcement Labor Services, Inc.,
Local #260, St. Paul, MN,

Union,

BMS Case No.10 –PN-- 0959

INTEREST ARBITRATION OPINION AND AWARD

Pursuant to **Minnesota Statute Section 179A.16, subd. 2** and **Minnesota Rules 5510.2930**, the Bureau of Mediation Services of the State of Minnesota certified the following issues between the above parties to arbitration on May 11, 2010:

ISSUE ONE: **Uniform 2010 – Amount of Uniform Allowance – Article 21**

ISSUE TWO: **Uniform 2011 – Amount of Uniform Allowance – Article 21**

ISSUE THREE: **Longevity Program Eligibility – Article 22**

ISSUE FOUR: **Duration – Length of Contract Term – Article 33**

ISSUE FIVE: **Wages 2010 – Wage Rates 2010 – Appendix A**

ISSUE SIX: **Wages 2011 – Wage Rates 2011 – Appendix A**

ISSUE SEVEN: **Pay for performance – Qualifying Activities – Appendix B**

The parties selected James A. Lundberg as the neutral arbitrator from a list of list of arbitrators provided by the Minnesota Bureau of Mediation Services and a hearing over the above issues was conducted in Shakopee, MN on August 25, 2010.

Briefs were posted by the parties on September 9, 2010 and the record closed upon receipt of briefs.

APPEARANCES:

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The City of Shakopee, Minnesota and the licensed Police Officers represented by Law Enforcement Labor Services Local #260 have been negotiating over the terms and conditions of employment for the essential services of law enforcement in a very difficult economic context. As a general observation, the final positions taken by the parties are not far apart. The Union's position is an attempt to maintain the relative economic position of Shakopee Police Officers within comparable jurisdictions. The Employer's position is taken due to the reliance of the City upon property tax revenues, as population growth slows and the market for real property continues to be weak.

Because the Uniform Allowance and Wage issues are in dispute for the years 2010 and 2011, the contract duration issue will be the first issue addressed in this opinion.

ISSUE FOUR: **Duration – Length of Contract Term – Article 33**

The Union is proposing a one-year agreement, which is the same duration as the last agreement. The Union's proposed language for **Article 33** is as follows:

This agreement shall be effective as of the first (1st) day of January 2010 and shall remain in full effect until the thirty –first (31st) of December 2010.

The negotiating history of the parties reflects no pattern on the issue of contract duration. Contracts have been negotiated for periods of one, two and three years. The most recent contract was for a period of one (1) year. Only two cities in the comparison

group used by the Union have settled for 2011. There is simply no pattern that justifies a duration of two (2) years. There is insufficient data available upon which to base a wage decision for 2011. Furthermore, economic uncertainty is a compelling reason for not awarding a two year contract. In *City of Brainerd and Law Enforcement Labor Services, Inc.* BMS Case No. 08-PN-0816 (October 2008) arbitrator Miller favored a one year contract in part because of "uncertainties in our economy." In *Morrison County and Law Enforcement Labor Services, Inc.* BMS Case No. 09-PN-0267 (June, 2009) arbitrator Holmes said "Given the current economic uncertainty, to award a contract with a duration of more than one-year would create a substantial risk for both the employees and the Employer.

The City of Shakopee proposes a two year collective bargaining agreement. The position of the City is as follows:

> *This agreement shall be effective as of the first (1st) day of January, 2010 and shall remain in full effect until the thirty – first (31st) of December, 2011.*

Despite the economic turbulence cited by the Union, Teamster's Local 320 entered into a settlement with the City of Shakopee on a two year contract for 2010-2011. The city's financial condition for 2011 is not known but the negotiations for a new contract for 2011 will have to begin immediately. Negotiations for the next contract will have to begin without any more information than the parties have at this time. All of the recent economic reports indicate deflation and worsening financial condition for Minnesota cities. Any change in the economic environment will be for the worse not for the better.

The City's proposal for a two year contract is identical to the internal settlement pattern. Furthermore, the City is proposing a two year contract with the LELS Sergeants unit. A one year contract will create a burdensome second cycle of bargaining at the City. Four of the last seven contract settlements between the Patrol Officers unit and Shakopee had durations of two or three years.

DISCUSSION:

The argument that this award should follow the existing internal settlement pattern is diminished by the fact that only one bargaining unit has settled with the City of Shakopee. The Public Works unit represented by the Teamsters Local 320 did enter into a two year contract. Neither the LELS Police Patrol unit nor the LELS Police Sergeants unit have settled with the City.

The last seven contract settlements between the City and LELS Police Patrol have resulted in three (3) one-year contracts, two (2) two- year contracts and two (2) three-year contracts. The bargaining history does not reflect a strong pattern of contract settlements of more than one year duration. In fact, the duration of the greatest number of contract settlements in the past seven years has been one (1) year.

Arguments for both parties center on the uncertainty of the current economic situation nationally, statewide and within the City of Shakopee. The uncertainty has much to do with tax policy and the fact that local governments rely heavily on real estate tax revenues. The economic environment is uncertain. However, the opinion that economic conditions for the City of Shakopee are certain to erode rather than improve is no more convincing than the opinion that some measures may be taken in the not too distant future to stabilize or improve the economic well being of the City.

While the parties to this arbitration have not arrived at an agreement regarding an appropriate group of cities from which comparisons should be made, there are only a couple of cities within either proposed comparison group[1] that have settled for the year 2011.

Given the uncertainty of the economic climate, the limited number of internal comparisons that can be made, the absence of a strong pattern of settlements for a duration of longer than one year and the very small number of contracts that have been settled within either comparison group for 2011, the duration of this contract should be for one year.

AWARD:

The following is awarded:

This agreement shall be effective as of the first (1st) day of January 2010 and shall remain in full effect until the thirty –first (31st) of December 2010.

ISSUE ONE: **Uniform 2010 – Amount of Uniform Allowance – Article 21**

ISSUE TWO: **Uniform 2010 – Amount of Uniform Allowance – Article 21**

The current contract language regarding the uniform allowance is as follows:

Employees will be paid a uniform allowance during January of each year. The allowance will be seven hundred seventy-five dollars ($775) for calendar year 2009.

The Union is proposing the following change to the current language for 2010:

[1] The City proposed a comparison group of 10 cities, which it used to update its pay plan. The 10 cities are Andover, Apple Valley, Chanhassen, Chaska, Cottage Grove, Inver Grove Heights, Lakeville, Prior Lake, Savage and Woodbury. Because Andover and Chanhassen do not have police departments, the cities of Crystal and Northfield have been added to the comparison group. The Comparison group used by LELS is the old Stanton Group V group of cities.

Employees will be paid a uniform allowance during January of each year. The allowance will be eight hundred fifteen dollars ($815) for calendar year 2010.

The Union is proposing the following change to the current contract language for 2011:

Employees will be paid a uniform allowance during January of each year. The allowance will be eight hundred fifty dollars ($850) for calendar year 2011.

Internal comparisons over this contract provision are not very helpful, as the collective bargaining agreement with the Sergeant unit is the only other City contract that provides a uniform allowance and the Sergeant unit has not settled. The City does provide 100% of the cost of one set of coveralls and a $100.00 footwear allowance for the Public Works unit, which is represented by Teamsters Local 320. The two types of uniforms are very different, making the validity of any comparison suspect.

Using old Stanton Group V cities for comparison, the trend has been to increase uniform allowances. Most of the cities in the comparison group increased their uniform allowance in both 2009 and 2010. The average uniform allowance in 2008 was $775, the average uniform allowance in 2009 was $769 and with roughly one half of the cities having settled for 2010, the average is up to $780. The anomalous dip taken in 2009 is attributed to the increase of Bloomington's allowance for 2008 to $1,000 and the reduction by Bloomington to a uniform allowance of $800 in 2009.

The City of Shakopee has negotiated a $25 increase in the uniform allowance every year beginning in 2003. The increases should continue due to an anticipated increase in uniform costs resulting from **Minnesota Statutes Section 181.196**, which requires public employers to purchase uniform items that are made in America, if they

are available. In *The City of Coon Rapids and Law Enforcement Labor Services, Inc.* BMS Case No. 09-PN-0861 (July, 2010) (Bard), arbitrator Bard was convinced 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 City is asking for no change of substance to the existing contract language.

The City proposes the following contract provision for 2010:

Employees will be paid a uniform allowance during January of each year. The allowance will be seven hundred seventy-five dollars ($775) for calendar year 2010.

The City proposes the following contract provision for 2011:

Employees will be paid a uniform allowance during January of each year. The allowance will be seven hundred seventy-five dollars ($775) for calendar year 2011.

The uniform allowance proposed by the Union over the term of a two year contract amounts to a ten percent (10%) increase over the existing benefit. The proposed increase is excessive.

The bargaining history of the parties reflects no prior adjustment of the uniform allowance as large as the forty dollars ($40.00) proposed by the Union for 2010 nor have the parties ever negotiated an increase as large as thirty five dollars ($35.00) for the uniform allowance. The greatest uniform allowance increase agreed to by the parties has been twenty five dollars ($25.00).

The uniform allowance is an economic item akin to wages or compensation. The uniform allowance is paid to Police Officers in cash and is not a receipt based system. In other words, Patrol Officers are not required to provide receipts to verify that they have purchased any specific uniform item. Also, the Made in America legislation cited by the Union applies to public employers but not to public employees. Since the employees, not the Employer, will be purchasing uniform items, the position taken by the Union is specious.

External comparisons are consistent with the Employer's position. The current uniform allowance is very close to the average uniform allowance paid within the ten (10) city comparison group. The data from Stanton Group V cities reflects an average of $769 in 2009 and a 2010 average of $780. The City's proposed $775 uniform allowance is competitive within the external market and should be adopted.

DISCUSSION:

Both parties cite the allowances for uniforms provided among Stanton Group V cities to support their positions. Within the comparison group in 2010 the average uniform allowance is $780. The average uniform allowance paid by the 10 cities the Employer believes should be used as the comparison group for Shakopee is $797. The comparisons made by the parties do not support an increase in the Uniform Allowance for 2010 to $815 nor do they support maintaining the current uniform allowance of $775.

The uniform allowance for Shakopee Patrol Officers has consistently risen by $25 every year, since 2004. The current uniform allowance rate is slightly less than the average uniform allowance paid within the comparison groups cited by the parties. The average uniform allowance within the comparison group submitted by the Employer is

only $3 less than the amount that would be paid, if the historical pattern of uniform allowance increases is adopted. All of the cities providing a uniform allowance have the actual costs of uniforms available for reference. The parties are aware of the typical sums an officer will expend over the course of a year on a uniform. In this instance, a uniform allowance of $800 is consistent with the sums paid within the comparison groups and should be awarded for 2010.

AWARD:

Employees will be paid a uniform allowance during January of each year. The allowance will be eight hundred dollars ($800) for calendar year 2010.

Having determined that the duration of the contract shall be one year, no award will be made on the issue of uniform allowance for the year 2011.

ISSUE THREE: Longevity Program Eligibility – Article 22

The Union proposes that the existing contract language remain in the collective bargaining agreement as follows:

22.1 The following Longevity Pay Plan will be in effect:

At the start of the fifth (5th) year of service, an employee shall receive one hundred twelve dollars and seven cents ($112.07) per month additional.

At the start of the eighth (8th) year of service, an employee shall receive one hundred thirty-eight dollars and ninety cents ($138.90) per month additional.

At the start of the eleventh (11th) year of service, an employee shall receive one hundred sixty-five dollars and seventy cents ($165.70) per month additional.

At the start of the fifteenth (15th) year of service, an employee shall receive one hundred ninety-four dollars and ninety-two cents ($194.92) per month additional.

22.2 In lieu of the longevity pay plan outlined in section 22.1, employees may choose to be covered under the performance pay system outlined in Appendix B to this

Agreement.

The Employer has the heavy burden of establishing a need to change the existing language and the burden of establishing that the proposed change will reasonably remediate the need for change. The Employer has failed to meet its burden.

The current longevity language found in the contract was a result of a 1991 Interest Arbitration Award by arbitrator Flagler, City of Shakopee and IBT Local 320, BMS Case No. 90-PN-320 (July, 1991). The language has remained unchanged in the contract for nineteen years. There have been many opportunities for the parties to negotiate different terms but they have not done so.

A comparison can be made with the contract between the City and the Sergeants bargaining unit. The language is identical "except for hire dates" and restrictions for newly hired or promoted Sergeants. The Sergeants contract is closer to the City's proposal but the change in the Sergeant's contract was negotiated and has been in place, since 1995. Furthermore, the use of longevity in the Sergeant classification is impacted by the fact that Sergeants are typically promoted from within the department and years of service are carried over. Consequently, longevity within the classification is diluted. It is common for types of compensation other than longevity to be negotiated for Sergeants.

The Public Works unit does not have a longevity provision in its collective bargaining agreement.

All of the cities within the Stanton Group V have longevity or some type of incentive in their collective bargaining agreements with Police Patrol units. The City of Blaine is the only Stanton Group V city that has phased out longevity. Blaine negotiated the phase out of longevity. The phase out was not obtained through arbitration.

The City of Shakopee proposes the following new language for **Article 22**:

bargaining agreement as follows:

22.1 The following Longevity Pay Plan will be in effect:

> At the start of the fifth (5th) year of service, an employee shall receive one hundred twelve dollars and seven cents ($112.07) per month additional.
>
> At the start of the eighth (8th) year of service, an employee shall receive one hundred thirty-eight dollars and ninety cents ($138.90) per month additional.
>
> At the start of the eleventh (11th) year of service, an employee shall receive one hundred sixty-five dollars and seventy cents ($165.70) per month additional.
>
> At the start of the fifteenth (15th) year of service, an employee shall receive one hundred ninety-four dollars and ninety-two cents ($194.92) per month additional.

22.3 In lieu of the longevity pay plan outlined in Section 22.1, employees hired or promoted prior to January 1, 2010 may choose to be covered under the performance pay system outlined in Appendix B to this Agreement. All employees hired or promoted after January 1, 2010 shall be eligible for the performance pay system outlined in Appendix B to this agreement.

The Employer attempts to simplify and unify compensation into a single system by limiting the longevity pay plan to employees hired or promoted prior to January 1, 2010. Under the Employers proposal all new hires and newly promoted employees would be covered by the performance pay system.

Of the thirty five (35) officers in the Patrol Officer bargaining unit only four (4) have selected the longevity plan. The officers who have continued in the longevity plan are the most senior officers. Only one employee hired since 1998 has opted into the longevity plan. The City plan will allow all existing participants to be grandfathered into the longevity plan, which means that existing bargaining unit members who have selected longevity will not be negatively impacted.

The pay for performance program is more lucrative than the longevity plan. A new hire is immediately eligible for $60.00 per month in performance pay and potential earnings may increase up to a maximum of $360 per month after four (4) years of service. The longevity plan in comparison pays $112.07 per month after four (4) years and pays a maximum of $194.92 per month after 14 years of service. The proposed package will pay employees more than the existing longevity plan.

The Shakopee Sergeants bargaining unit has a longevity pay plan and a performance system. The internal comparison between the Sergeants unit and the Patrol unit is valid and favors the Employer's position. The Sergeants unit longevity pay plan is limited to employees hired prior to December 31, 1994. It is time for the change to be made to a unified system for performance pay and longevity.

DISCUSSION:

The City proposed phase out of longevity in lieu of the pay for performance plan appears to be both logical and potentially more rewarding for bargaining unit members. However, the pay for performance plan does incorporate a number of participatory elements which may not be acceptable to the bargaining unit. The issue of "qualifying activities", which is also in dispute in this arbitration exemplifies the arbitrators concern. The current contract allows bargaining unit members to select either longevity or pay for performance and longevity has been selected infrequently. The pay for performance option appears to have been received more favorably by the work force. However, neither the current pay for performance provision nor the proposed pay for performance provision appear to incorporate an acceptable quid pro quo for ending the longevity

program. Rather than imposing a solution upon the parties at this time, the longevity provision shall be unchanged.

AWARD:

Longevity program eligibility found at Article 22 of the collective bargaining agreement shall remain the same.

ISSUE FIVE: **Wages 2010 – Wage Rates 2010 – Appendix A**

The current wage rates are found at **Appendix A** of the collective bargaining agreement:

	Step 1	**Step 2**	**Step 3**	**Step 4**	**Step 5**
	start	*after 12 mos*	*after 24 mos*	*after 36 mos*	*after 48 mos*
	75%	*81.25%*	*87.50%*	*93.75%*	*100%*
Monthly	$4,024.74	$4,360.13	$4,695.52	$5,030.92	$5,366.31
Hourly	$23.22	$25.16	$27.09	$29.03	$30.96

The Union is proposing a 3% increase over 2009 the wage rates found in the collective bargaining agreement at **Appendix A**.

The Union proposal is based upon the normal factors that are considered by arbitrators in interest arbitration, including internal pay equity, external market comparisons, the Employer's ability to pay, the cost of living and other economic factors.

The appropriate external market comparisons in this case are wages paid to cities of the no longer existing Stanton Group V, because the cities that used to comprise the Stanton Group V are similar in population to Shakopee. Shakopee is the fastest growing City in the State of Minnesota and it should be compared with cities of similar size.

When the City substituted Crystal and Northfield into its proposed comparison group, it was adding two significantly smaller cities.

The Employer proposes the use of 10 cities that were used for comparison in a compensation study conducted by the League of Minnesota Cities. The Union objects to the new comparison group. The comparison group was not agreed upon by the Union and has not been accepted in any prior arbitration. In fact, two of the cities within the Employer's comparison group do not have police departments. The two cities that were substituted are much smaller than Shakopee and coincidently have top patrol rates close to the top patrol rate of Shakopee. Also, the two cities happened to have settled at 0% for 2010. The City pulled Chaska out of the comparison group. If Chaska is added back into the comparison group, the Union's position is 1.1% behind the group average and the Employer's position falls to 4.5% below the comparison group average.

The City has submitted wage comparisons from a number of counties for consideration. The comparisons were made based only upon general increases on actual wages. Counties have never been used for wage comparisons in the past and should not be used in this arbitration.

The old Stanton Group V cities should be used as the appropriate comparison group. If the Union's position is awarded for 2010, the top patrol wages for 2010 will be 3.10% below the comparison group average. If the Employer's position is awarded, top patrol wages for Shakopee police will be 5.92% below the market average. The external comparisons support the Union's wage proposal.

The Shakopee Patrol unit is a balanced class as defined by the Minnesota Pay Equity Act. Because the bargaining unit is a balanced class, the Pay Equity Act does not

apply to this dispute. However, the Union has performed a Pay Equity analysis and the Union's proposed 3% wage increase would not move the City out of compliance with the Pay Equity Act.

Only one of the represented bargaining units within the City of Shakopee has settled. The Public Works unit settled a two year contract for 2010 and 2011. The other bargaining unit, Police Sergeants, has not settled for 2010 or 2011. The settlement arrived at by one bargaining unit does not establish a pattern. Furthermore, the City has a history of wage increases that are internally inconsistent.

In this situation, the Employer is asking the arbitrator to make an award based primarily upon one internal wage settlement and wages imposed upon the portion of the work force that is not represented. If market factors and differing job demands are not taken into account, the process of collective bargaining is eroded.

The City of Shakopee has the ability to pay the Union's proposed pay increase. The City's 2009 Comprehensive Annual Financial Report reflects a positive balance sheet with assets exceeding liabilities by $331 million. $84 million of the unrestricted assets may be used to meet the City's ongoing obligation to citizens and creditors. The General Fund balance was $10.7 million or 67% of the total General Fund Expenditures. The overall economic health of the City of Shakopee is good and it has the ability to pay the proposed wage increase.

The Union's wage proposal represents only 1.9% of the unreserved and undesignated General Fund balance. The General Fund has an undesignated balance of $10.7 million that could be used to supplement the budget in the amount of the Union's proposed wage increase.

Based on the testimony of a City witness, the City Council may decide to spend down excess balances in the General Fund by building a new Fire Hall. The decision has not been made. A portion of the budget set aside "rents" for the express purpose of "pre-paying" for future capital expenditures. Either the "rents" portion of the budget ought to be used for capital projects or there exists an additional 10% of the General Fund (over a million dollars) available for transfer to offset increased wage costs.

If the Employer's wage proposal is adopted, the buying power of Shakopee Patrol Officers wages will fall. While the cost of living has not changed dramatically in recent years, it did rise by 1.5%. In order for the wages of Shakopee Patrol Officers to keep pace with inflation and maintain proximity to the average wages paid to other Stanton Group V Patrol Officer bargaining units, the Union's wage proposal for 2010 should be adopted.

The City of Shakopee proposes a 0% wage increase over 2009 rates of pay.

The weak economic condition of the country, the state and the local community must be taken into consideration in this arbitration. The primary source of revenue for the City of Shakopee is property taxes. Property taxes are based upon property values, which have fallen markedly over the past several years. In the not too distant past, Shakopee was the center of significant population growth. As more residents moved into the City, a increasing number of residences were being taxed based upon rising property values. As the community was growing and the real estate market was booming, commensurate increases in public employee compensation were both reasonable and necessary. In the current economic down turn, the City's growth has slowed, property values have dropped, and tax payers are losing their jobs and their homes. It would not be prudent to

increase public employee compensation at this time nor does the proposed wage increase reflect a sustainable economic strategy.

Any wage increase would result in an ongoing expense to the City in an unpredictable economic climate. Property taxes represent the largest portion of City revenue and the tax base is eroding. Interest income previously earned by the City on investments has dropped over the past several years. Finally, Local Government Aid is not a possible source of revenue. It would be imprudent for the City to commit to pay increasing sums for compensation as its ability to generate revenues drops off.

The internal wage settlement pattern in the City of Shakopee is zero percent (0%) for 2010 and one percent (1%) for 2011. The Patrol Officers have not demonstrated any basis for departing from the wage pattern that has begun to take shape within the City.

Wage settlements arrived at in comparable jurisdictions have been at 0% when the settlements have been recent. There are some wage increases that have been greater than 0% for 2010 but those increases were obtained through settlements made in early 2009. In support of the claim that external settlements do not support the Union's position, the City cites (0%) settlements involving the State of Minnesota, Hennepin County and Dakota County.

The Union has argued that the Consumer Price Index should be considered in this arbitration. In response to the cost of living argument the Employer contends that there is strong evidence that there will be a negative or zero CPI for 2010. Since the Teamsters Public Works Unit and non represented employees have established an internal pattern of settlement at 0% the CPI should have no impact on this award.

The City is facing the permanent loss of State aid, reductions in property value and taxing capacity and pressure to hold down property taxes, since many tax payers are unemployed or underemployed in this difficult economy. A 0% wage increase is reasonable for 2010 and 2011 in order to balance the budget, avoid layoffs and maintain core services for the residents of Shakopee.

DISCUSSION:

The central questions in this wage dispute are whether the Employer has the ability to pay a wage increase and whether payment of a wage increase is sustainable.

One important indication of whether a City has the ability to pay a wage proposal and whether the proposal is sustainable, is the unreserved fund balance in the general and special revenue funds as of December 31. The Minnesota State Auditor recommends a December 31 balance of approximately 35% to 50% of the fund operating revenues, which should be sufficient to pay no less than five (5) months of operating expenditures. Since real estate tax revenues are not collected until mid year, the fund balance needs to be high enough to meet the City's obligations until it receives additional income from tax collections. Shakopee's fund balance on December 31, 2009 was 67% of the next year's budgetary expenditures. For the year 2010, the evidence supports a claim that the City has the ability to pay some wage increase.

On the other hand, the City has experienced a drop in revenues from real estate taxes as a result of falling property values and lower population growth. Revenues from interest income have also fallen. Declining property values and low interest rates are factors that in this case are relevant to the question of long term sustainability. If expenditures on wages, which amount to 61% of the City's budget, are increased at levels

that can not be maintained due to the leveling off or decline of revenues, wage freezes, wage reductions or lay offs will be necessary. The evidence does not clearly support an ability of the City to sustain the 3% wage increase proposed by the Union.

Internal wage comparisons have been heavily relied upon in interest arbitrations, since the enactment of the Minnesota Pay Equity Act. Even in situations where Pay Equity is not at issue, internal wage comparisons are important. If there is disparity between the way an Employer treats different bargaining units, problems within the work place may arise. The Shakopee Police Patrol unit is a balanced unit as defined by the Pay Equity Act. The 3% wage increase proposed by the Union will not move the City out of compliance with the Pay Equity Act. However, the 3% proposed pay increase is substantial in comparison with the 0% pay increase obtained by the Public Works unit in negotiations. Since only one bargaining unit has settled with the Employer, there is no wage settlement pattern that can be referenced. The wage settlement of the Public Works group can be given weight in this review but the single settlement may not be accorded the status of a wage settlement pattern.

The parties have not agreed upon an external comparison group. The City uses ten (10) cities that were selected for the purpose of creating a pay plan update. The City used Andover, Apple Valley, Chanhassen, Chaska, Cottage Grove, Inver Grove Heights, Lakeville, Prior Lake, Savage and Woodbury. Two of the cities, Andover and Chanhassen do not have police departments. Consequently, Northfield and Crystal were substituted in the comparison group. The Union used the old Stanton Group V cities for comparison. There is some overlap between the comparison groups.

More of the cities within the two comparisons groups have settled at 0% for 2010 than any other percentage wage provision. Four cities within the old Stanton Group V settled at 3%, one city within old Stanton Group V settled at 3.25%, three cities within old Stanton Group V settled at 1% and five cities within old Stanton Group V settled at 0%. The majority of cities within old Stanton Group V have not settled for a 0% wage increase. Within the Employer's proposed comparison group, five of the cities have settled for a 0% wage increase. There are two 3% wage increases within the Employer's proposed settlement group and one settlement with a 1% increase on January 1st and a second 1% increase on July 1st of 2010. The wage settlement comparison data supports the claim that small wage increases or no wage increases are being negotiated between cities and Police Patrol units. The argument that wage increases greater than 0% were arrived at in 2009 and should, therefore, be disregarded ignores the fact that the economic outlook in 2009 was very poor.

External comparisons demonstrate that the most frequent wage settlement percentage for 2010 within comparable cities has been zero but a significant number of comparable cities have agreed to pay wage increases up to 3.25%.

Cost of Living data provided by the Union indicates that the Consumer Price Index has risen at 1.5%. Neither party argues that inflation is a significant factor in this arbitration.

The small increase in the Consumer Price Index and the relatively strong financial condition of the City, despite lower property values and low interest income are considerations that favor a wage increase. However, neither the internal nor the external wage comparisons justify a 3% wage increase for 2010. Furthermore, the Union's

proposed wage increase may not be sustainable if the City's ability to generate revenues declines.

A 1% wage increase for 2010 will allow the wages of bargaining unit members to keep pace with wages paid in comparable cities and with the slow rise in consumer prices and does not depart significantly from the wage settlement that the City made with Public Works.

AWARD:

A 1% wage increase over the 2009 wage rates found at Appendix A is awarded.

ISSUE SIX: **Wages 2011 – Wage Rates 2011 – Appendix A**

*The Union has proposed a 3% wage increase over 2010 rates of pay in **Appendix** A for 2011.*

In addition to the arguments advanced in support of the 2010 wage proposal, the Union points out that wage data for 2011 is simply not available. Other jurisdictions have not settled leaving no settlement pattern to rely upon for 2011.

The City's argument that there must be internal wage consistency breaks down completely, since it is proposing a 0% wage increase for the Patrol unit but agreed to pay the Public Works unit a 1% wage increase in 2011.

The City is proposing 0% wage increase over 2009 rates of pay for 2011.

AWARD:

The contract duration is for one year. Hence, no wage award is made for the year 2011

ISSUE SEVEN: **Pay for performance – Qualifying Activities – Appendix B**

The Union proposes no change in the existing contract language of **Appendix B** of the Collective bargaining agreement, which says:

B. 3 Community Service

- Employees who are actively involved in some outside community service (scouting activities, service clubs, youth athletics, church groups, etc.) would be eligible to receive additional compensation.
- Community service does not have to occur in the City of Shakopee.
- Community service activities are an excellent means of personal growth and development, and should result in the employee having substantial input into the community.
- Community service activities need to occur on an annual basis.
- Community service activities must be pre-approved by the Chief of Police and employee must show evidence of participation in the group/activity.
- Eligibility after four years of service.

In Interest Arbitration new concepts are not favored. It is unusual for an arbitrator to modify existing contract language because the quality of the relationship between the parties could be placed at risk. *Minnesota School Employees Association and ISD No. 11, Coon Rapids,* BMS Case No. 84-PN-52-A, Bognanno, (1984). The Union contends that the appropriate way to arrive at a modification of the Pay for Performance qualifying criteria is through the bargaining process.

The comparable section of the Sergeants contract is identical to the existing language found in the Police Patrol unit contract and the Public Works contract has no similar provision. Hence, an internal comparison supports the Union's argument.

External comparisons also favor the Union's position. The two communities, Minnetonka and Blaine, in Stanton Group V that offer performance pay, allow community service to be performed outside of the community.

The City of Shakopee proposes the following change in **Appendix B** of the collective bargaining agreement:

B. 3 Community Service

- Employees who are actively involved in some outside community service (scouting activities, service clubs, youth athletics, church groups, etc.) would be eligible to receive additional compensation.
- Community service ~~does not have to occur in the City of Shakopee~~ must benefit the Shakopee community.
- Community service activities are an excellent means of personal growth and development, and should result in the employee having substantial input into the community.
- Community service activities need to occur on an annual basis.
- Community service activities must be pre-approved by the Chief of Police and employee must show evidence of participation in the group/activity.
- Eligibility after four years of service.

The Employer's proposal is designed to create a direct link between the receipt of Performance Pay and performance of community service. The Employer's proposal simply requires that employees performing community service must perform service that benefits the Shakopee community. It is reasonable that the payments made by the City for

community service be made for service that benefits the City that is paying the incentive. The taxpayers of Shakopee are entitled to benefit from their performance pay system.

Within the external comparison group of ten (10) cities, two cities have a performance pay system. Apple Valley's pay performance system does not provide compensation for community service. The City of Savage provides compensation for community service. When Savage Police Officers perform community service that is related to the City of Savage, their incentive pay is higher. It should be noted that the Minnetonka performance pay plan which is cited by the Union, requires officers to obtain pre-approval of their community service project from the Minnetonka Police Chief.

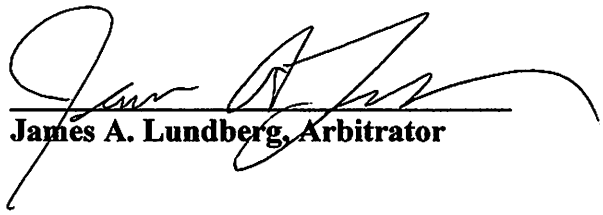
DISCUSSION:

The Employer's position that qualifying community service projects must benefit the Community is logical. It also is not a term that was acceptable to the bargaining unit, when the provision was negotiated. Similarly, it is not currently a term that is acceptable to the Union. The pay for performance qualifying provision is an alternative to the longevity program. The pay for performance program was the product of negotiations. A change in the specific language of the provision is best accomplished through negotiations and imposition of new language by the arbitrator may be detrimental to the long term ability of the parties to arrive at acceptable contract terms through negotiations.

AWARD:

No change in Appendix B of the Collective bargaining agreement at B 3. Community Service is awarded

Dated: October 8, 2010



James A. Lundberg, Arbitrator