

IN THE MATTER OF THE ARBITRATION BETWEEN

Minnesota Teamsters Public and Law Enforcement
Employees' Union, Local #320 (Police Officer Unit),
Union

and

DECISION AND AWARD

City of Edina,
Edina, Minnesota,

Employer.

BMS Case No. 10-PN-1183
(Interest Arbitration)

ARBITRATOR:

Janice K. Frankman, J.D.

DATE OF AWARD:

December 7, 2010

HEARING SITE:

City Hall
4801 West 50th Street
Edina MN 55424

HEARING DATE:

October 18, 2010

RECORD CLOSED:

November 2, 2010

REPRESENTING THE UNION:

Paula R. Johnston, General Counsel
Minnesota Teamsters, Local No. 320
3001 University Avenue S.E.
Minneapolis MN 55414

REPRESENTING THE EMPLOYER:

Cyrus R. Smythe, PhD
Consultant
18955 Maple Lane
Deephaven MN 55331

10/11/10 10:17

8/10/10 10:17

JURISDICTION

The hearing in this matter was held on October 18, 2010, pursuant to Minn. Stat. § 179A.16. The Bureau of Mediation Services received a written request from the Union by letter dated April 8, 2010, to submit contract negotiations to conventional interest arbitration. A Request for Final Positions and Certification to Arbitration was issued by Commissioner Hoffmeyer on April 13, 2010. Final positions were filed by the Union on April 27, 2010, and by the Employer on April 28, 2010. The Arbitrator was notified of her selection by Union Counsel's letter dated June 29, 2010. By letters dated June 30, and August 4, 2010, sets of potential hearing dates were provided to the parties, and on August 23, the parties advised the arbitrator that October 18, 2010, had been selected for hearing.

The parties were afforded a full and fair opportunity to present their cases. They submitted Post-Hearing Briefs dated November 1, which were received on November 2, 2010, when the record closed and the matter was taken under advisement. The Arbitrator requested a five day extension of time to December 7, 2010, to issue this Award which was granted by the Commissioner as required by law.

In arriving at a decision on the issues and making an award, pursuant to Minn. Stat. § 179A.16, subd. 7, the Arbitrator has considered the statutory rights and obligations of the Employer to efficiently manage and conduct its operations within the legal limitations surrounding the financing of its operations.

ISSUES AT IMPASSE

The Certification to Arbitration certifies receipt of the parties' requests to submit six (6) issues to conventional interest arbitration and determination by the Bureau of Mediation Services that the matter was ready for arbitration pursuant to Minn. Stat. §179A.16, subd. 2. In his letter dated April 13, 2010, the Commissioner directed the parties to submit their final positions on the six issues no later than April 28, 2010.

At the commencement of the hearing on October 18, 2010, the parties stipulated to a two year contract duration and revision of their Collective Bargaining Agreement as follows:

ARTICLE XXVIII. DURATION

This Agreement shall be effective January 1, 2010, except herein noted, and shall remain in full force and effect until the 31st day of December, 2011. In witness thereof, the parties hereto have executed this Agreement on this _____ day of _____ 2010.

The certified issues to be resolved by arbitration which are set forth in the letters from the parties received by the Commissioner by, are as follows:

1. (settled as provided above)
2. Wages –2010 – Amount of Increase, If Any – Appendix
3. Wages –2011 – Amount of Increase, If Any – Appendix
4. Insurance -- 2010 – Employer Contribution, Increase, If Any – Art. 17

5. Insurance – 2011 – Employer Contribution, Increase, If Any – Art. 17
6. Shift Differential – What, If Any – Appendix A

BACKGROUND

The City of Edina: Demographics; Financial Status; and Statutory Compliance

A Comprehensive Annual Financial Report for the fiscal year which ended December 31, 2009, was delivered by the Department of Finance to the Mayor, City Council and citizens by letter dated June 24, 2010. The City of Edina is a fully developed first-ring suburb of the City of Minneapolis. Edina occupies 16 square miles of land and has a population of 48,169. 55.5% of the land is attributed to residential use, 13.1% to roadways and 11.8% supports park and open space. The balance is used for commercial, industrial and public/semi-public uses. The City provides a full range of services. It takes pride in being known for its healthy economy, high quality residential property and attractive neighborhoods; for being home to significant retail and medical facilities and corporate headquarters; and for its nationally recognized excellent public schools. It has received well-deserved recognition for its excellence in financial reporting. See, Union Exhibit Book, Tab 19

The City Council is required to adopt a final budget no later than the close of the fiscal year which serves as the foundation for the City's financial planning and control. The budget is prepared by fund, function (such as public safety) and department (such as the police). Department heads may use resources within their departments as they see fit, and the City Manager may authorize transfers of budgeted amounts between departments.

In planning its 2010 budget, the Annual Report sets out the City's high goals and points to numerous facts in support of its healthy economy along with detail relative to property values and taxation, important since property taxes constitute 74% of the City's revenue sources:

The City strives to provide an uncommonly high quality of life for our residents and businesses and the relatively healthy local economy helps to make this goal a reality. The unemployment rate in Edina for February 2010 was 5.4%, well below the state and national levels.

Property values in Edina increased at a rapid pace for several years through 2006, but the growth has slowed since then. Estimated market value of all real estate actually decreased 0.6% for taxes payable in 2010 after a 1.3% increase the year before.

. Tax capacity for real estate increased 0.5% for taxes payable in 2010, and has been increasing steadily ever since the state revised property tax law in 2001, although that growth has slowed since 2006 along with values.

Due to the recent increase in market value and tax capacity, property tax rates had been decreasing through 2007, although tax rates now appear to be rising slightly.

All of these factors above were considered in preparing the City's budget for the 2010 fiscal year. The City's adopted 2010 budget includes a property tax levy of \$20,737,472 for the general fund, an increase of 2.2% from the 2009 general fund levy.

Union Exhibit Book, Tab 19 at pages 19 and 20

Eric Roggeman, Assistant Finance Director for the City, co-authored the Annual Financial Report. He testified to the accuracy of the Report as well as Financial Updates he prepared for May and June, 2010. The City enjoys a favorable and stable financial environment. There is considerable re-development, the City provides 50,000 jobs and as noted above, unemployment at 5.4%, is well below the State average. Its total 2009 tax capacity was \$122,558,594 and total market value was 10,087,598,853. Its Standard and Poors and Moody's bond ratings are the highest at AAA and Aaa respectively. The City expects to maintain the ratings which are derived from analysis of tax base and capacity; reserves and budget practices.

For fiscal year 2009, the assets of the City exceeded liabilities by more than \$170 million, increasing the City's assets by more than \$6 million. Of the total assets, nearly \$46 million are unrestricted and "may be used to meet the City's ongoing obligations to citizens and creditors in accordance with the City's fund designations and fiscal policies." On December 31, 2009, the unreserved fund balance for the General Fund was \$12,031,358 or 44% of the General Fund expenditures, well within the State Auditor's recommended range of 35-50%. Union Exhibit Book, Tab 19 at page 9.

City operating expenses, including salaries, are paid from the City's General Fund. Revenue sources for the Fund include property taxes; permits, fees and charges; investment income; and other unspecified sources. The City is not eligible for State LGA funding. Its financial challenges, therefore, come from potential reduced property tax levies; decrease in licenses and permit fees; or decrease in investment income as a result of low interest rates. Revenues from those sources were less than budget during 2009; however, mid-year spending adjustments saved the City more than \$1.5 million of budgeted expenditures. The budget was never formally changed, and there was no need to draw upon the existing fund balance for operations. The adjustments included reduced staffing through overtime, part-time staffing, attrition and voluntary furloughs. Departments deferred equipment purchases where possible and unexpected savings came from lower than expected fuel, commodity and insurance costs.

The 2009 budget for police protection was \$8,147,023 including \$6,453,422 for personal services. The actual total expenditure was \$7,583,877 including \$6,289,875 for personal services. The Police Department was under budget a total of \$563,146 including \$163,547 for personal services.

General Fund revenues through June 30, 2010, were \$13,053,156 or 48% of total budgeted revenues for 2010, up from 41.4% for the same period in 2009. The actual increase was \$1,104,641. The improvement was the result of higher revenues than projected and lower budgetary expectations for 2010. Expenditures were 44% of budget for 2010, down \$649,732 resulting in a net increase in the fund balance of \$1,756,114. Public Safety expenditures were

down \$204,773 from the previous year.¹ Property tax payments for the first half were 99%, up from 97% in 2009. License and permit revenue increased by \$126,051 from 2009. Minutes of the March 2, 2010, Closed Session of the Edina City Council report cancellation of budgeted three mandatory furlough days for 2010.

During Mr. Roggeman's five year tenure in the City, there has been no draw on the General Fund balance for operations. When asked to predict the financial climate in the next fifteen months, he offered his opinion that there will be no rapid improvement in the economy, that Edina will continue on a path of good financial position and that there will be no drastic improvement which he agreed the City does not need to maintain its positive financial status.

Organizational Structure; Bargaining Unit

A mid-January, 2010, Compliance Report from the State accounts for 341 City employees. The Report confirms that the City is in compliance with State Pay Equity requirements. It identifies the employees by position and gender, and it provides their wages. This record does not include a City organizational chart or identify the number of bargaining units or the number of employees included in them. A new City Manager was hired in September, 2010. His compensation is at the maximum allowed by law, tied to the salary of the Governor. His benefits include 100% paid dependent health insurance coverage. The Chief of Police took his position on January 1, 2010.

This bargaining unit includes 35 police officers and 4 inspectors. Six of the 39 members are female. The Police Department is authorized for 51 members in this unit. There were 50 members when a freeze was imposed. No date for the freeze was provided. There is limited evidence with regard to this unit's bargaining history. The record includes comparison of insurance contributions for Contract years beginning in 2000. There is no evidence of earlier interest arbitration or past practice relative to internal comparables. There is limited evidence of past practice relative to external comparables. Detailed wage and benefits information is provided for contract years beginning in 2007 which includes the same cities, except one, which appear on the Union's external comparable list in this case.² The City has proposed a separate list.

Factors for Analysis

Four well-accepted criteria for deciding financial issues in interest arbitration include consideration of internal and external comparables, the City's ability to pay and other economic factors including changes in cost-of-living and potential adverse impact on retention or attraction of employees. In recent years, the analysis of the "ability to pay" category has more frequently included consideration of one-time or extraordinary events which significantly impact the financial position of a city in negative or positive ways. Examples are loss of significant revenue through unallotment of State aide; unusual loss or reduction of investment income; reduction in tax levies or property tax receipts; reduced real property market value; receipt of federal stimulus money; and unexpected proceeds from bond sales or other extraordinary transactions.

¹ No detail has been provided for the Police Department.

² The CBA preceding this Award was effective for the period January 1, 2008 – December 31, 2009.

In this case, and the many other recent interest arbitration cases heard and decided in Minnesota in 2010, there has been focus upon the general state of the economy and the statutory provision which requires the arbitrator to consider the statutory rights and obligations of the Employer to efficiently manage and conduct its operations within the legal limitations surrounding the financing of its operations. There has been reference to the state of the economy at all levels of government in this country and around the world including predictions made by national leaders and observations concerning trade with foreign countries. There has been reference to reduced state funding, financing of national debt, the impact of unemployment, foreclosures, devalued real estate, low home sales, increased taxes, reduced investment income, depleted pension funds, and flat wages and benefits such as social security.

The evidence and testimony presented at hearing relative to each of the four factors will first be addressed generally, and more specifically, in conjunction with decisions reached with regard to the wage and insurance requests which have been made in this case.

Internal Comparables

There is limited evidence in this record with regard to the City's workforce. It is unknown how many bargaining units there are or how many of the 341 employees identified on the January, 2010, Pay Equity Compliance Report are union members. There is no reference to settlement of any bargaining agreement for 2010/2011. The City refers to past practice to align all City employees with regard to wages and insurance. There has been a statement that all employees received a .5% increase in wages effective July 1, 2010, and will receive another .5% increase on January 1, 2011. There is reference in the City's Annual Report for 2009 to no provision of cost of living adjustments in 2009. The statement was also made that all employees received a \$25 increase to insurance contributions.

External Comparables

The parties have submitted significantly different lists of proposed comparables. The Union list is characterized as the Stanton Group 5 list. The City has submitted a list of six contiguous suburbs which it characterizes as "within the realm of the City's influence". There is evidence that the Union's proposed list was used in the recent past for bargaining of the last CBA. A series of tabs in the Union Evidence Book include 2007 detailed wage and benefits information for 22 cities including Edina. The City has expressly objected to the Union's list.

The Union list proposed for this case includes Apple Valley, Blaine, Bloomington, Brooklyn Park, Burnsville, Coon Rapids, Cottage Grove, Eagan, Eden Prairie, Fridley, Inver Grove Heights, Lakeville, Maple Grove, Maplewood, Minnetonka, Oakdale, Plymouth, Richfield, Roseville, Shakopee, St. Louis Park and Woodbury. No reason was provided for the addition of Oakdale.³ These cities, including Edina, are greater metropolitan area cities with a population of more than 25,000, excluding cities of the first class.

³ The arbitrator notes that Oakdale is one of two of the proposed comparables which receives a pay differential; it has a comparatively high top wage figure; and it is one of four cities for whom there is 2011 wage data.

The City maintains that the Union's list is outdated and that parties and arbitrators have long agreed that comparison among cities of like population is not appropriate. It claims that the Stanton Group is out of business and this list should be rejected. It urges that its list of six cities, contiguous with Edina, and with whom there is commonality, is more meaningful. It asserts that the seven cities share policies and practices, have similar crime statistics and work together in a variety of ways. The Chief did not choose the list. He agreed that there may be other cities in the metro area which are comparable. He described shared training with Bloomington, Eden Prairie, Minnetonka, Richfield, St. Louis Park and Hopkins; regular meetings among the Chiefs; and shared SWAT and Hostage Teams. He did not address financial or economic commonality. Six of the seven cities are included on the Union's list. Hopkins is not. The City noted that Hopkins is currently involved in arbitration for 2010/2011 although it provided 2010 wage information for Hopkins.

The manner in which comparisons are to be made is also in issue. The Union has provided detailed wage and benefits information for 2007 for all of its proposed comparable cities except Oakdale. Its information for this case compares minimum and maximum wages for 2010 and 2011, and provides Total Tax Capacity and Market Value comparisons for 2009.

The City seeks to compare total package figures for the seven cities which includes all forms of compensation and benefits. It submitted replacement documents with its Brief stating that errors had been made on the Compensation and Health Insurance Contribution exhibits presented at hearing. No foundation was provided for how the information was gathered either at hearing or in the briefing, and to the extent there are changes, it is new evidence which cannot be properly considered.⁴ It appears that errors may still exist, even for what is identified as beginning and top base pay. Finally, it is not appropriate to consider total top compensation as the City suggests. It is not possible to accurately compare the results of negotiation in each City for the varied benefits identified for each one. Moreover, benefits often reflect internal comparability.

There has been no objection or issue raised with regard to the accuracy of the Union's figures for its proposed comparables for 2010 and 2011. They provide an opportunity for objective comparison of concrete data. By considering base pay, cities are compared by where they commonly begin in determining compensation. Other items of pay and benefits uniquely reflect an individual city's policy, philosophy, organization, ability to pay and need. The Stanton Group data continues to be utilized by parties in current cases. In some cases, parties have chosen to agree to have their own market study performed.⁵ For these reasons and the issues which the City's list raises, it is appropriate to adopt the Union list for this case. At the same time, the City's comparables have not been ignored. With the exception of Hopkins, they are included on the Union's list.

⁴ There is no evidence that the Union was provided with the replacement exhibits before the deadline for Post-hearing Briefs. Fairness and due process require an opportunity to fully respond to a party's case. In some cases, hearings are re-opened to take testimony or receive evidence in response to new or changed evidence.

⁵ The Arbitrator notes that the Stanton Group data is available at the Gallagher Benefit Services, Inc. website following the merger of the two entities. See, www.gallagherbenefits.com

Ability to Pay

The detailed accounting of the City's financial status provided by its complete and well-written Annual Report for 2009, and Financial updates for 2010, together with the testimony of its Assistant Finance Director provide a sound basis for determining whether the City has the ability to pay wage and insurance contribution requests made in this case. The City has in effect admitted an ability to pay, urging the Arbitrator to change the question to whether, given the state of the economy, the City should pay.

It is appropriate to also observe other evidence beyond certifiable financial data in considering this issue. While it is not appropriate to cast judgment upon the City's decisions as to how it spends its money, its actions may be revealing and, indeed, provide evidence of ability to pay. The City's policy of strong and prudent fiscal management together with its goal to provide "uncommonly high quality of life" is reflected in its actions. It clearly acts, as it is able, from a position of abundance as opposed to scarcity. There are several examples of recent transactions which support this conclusion. City Council Minutes, news releases and articles, which are a part of this record, report significant equipment purchases for the Police Department, the entry into a contract with the City of Golden Valley to provide dispatch services and the hiring of a new City Manager at top salary and benefits.

Other Economic Factors

Distinct from all but one of the many political subdivisions for which interest arbitration awards have been issued in 2010, the City of Edina is not eligible for State LGA and therefore not subject to the adverse impact of significant unallotments experienced by the others.⁶ There is no evidence of any unusual or one-time event or circumstance which has either negatively or positively impacted the City's financial position, requiring special consideration in determining ability to pay for the contract period in question. Moreover, evidence of reduced or minimally increased property tax levies demonstrates that the City's citizens have not been asked to support provision of City services and capital improvements in an extraordinary way. In fact, there has been express concern for the well-being of the citizenry in that regard.

This is not to say that the City has been exempt or immune from the effects of a slow and declining economy. Its financial reporting and City Council Minutes reveal prompt, prudent action taken, beginning at least by mid-2009, to address areas of concern and to take steps to stem the potential adverse tide. This well-managed City very effectively avoided what might have been a negative result for fiscal year 2009. As it was, the results were positive, in part because certain prognostications did not occur and because of spending cuts, some curtailment of pay increases, an apparent hiring freeze and proposed implementation of furlough days. In fact, its assets, including fund balances, increased in value for fiscal year 2009, and continue to increase in 2010. Mr. Roggeman's testimony on October 18, 2010, confirmed on-going positive performance. In short, this is a financially sound City.

⁶ The City of Plymouth is not eligible for State LGA. See , LELS, Inc., Local 18 and City of Plymouth, BMS Case No. 10-PN-1107 (Latimer, 10/2/10).

Issues 2 and 3 – Wages – Amount of Increase, 2010 and 2011 – Appendix A

Union Position

The Union seeks wage increases by three percent (3%) in each of the Contract years. It supports its request by salary comparison with police units in 22 greater metropolitan area cities. The Union has also provided Total Market Value and Total Tax Capacity comparisons which it asserts demonstrate the City's superior financial status. Finally, Annual and Updated Financial Reports for 2009 and 2010 have been offered in support of the Union's position that the City has the ability to pay the increases it requests for both 2010 and 2011, consistent with statutory requirements of fiscal responsibility and compliance with Pay Equity provisions and State Auditor guidelines relative to unrestricted General Fund balances. The Union points to testimony provided by the Assistant Finance Director which underscores the City's continuing positive financial position.

The Union resists the City's assertion that this bargaining unit has been or is properly compared with all other City employees with regard to wages. It disputes that any pay equity issue exists and argues there is no basis for disputing that the City has literally millions of dollars available with which to fund police pay increases. It notes that the total cost of a 3 percent increase at top pay for 2010, even though all unit members are not at top pay, would be \$78,026.91 or .0017% of unrestricted net assets and .0065% of unrestricted general fund reserves. Finally, it points to recent transactions which reflect the strength of the City's financial position. The Union argues that, based upon the entire record made at hearing, the City has no basis for opposing its request.

Addressing the numerous interest arbitration Awards cited by the City in support of its position, the Union argues the majority of the cases are uniformly distinguishable from this case. It points to the Awards for the Cities of Coon Rapids and Plymouth and asserts that they provide support for its case along with the Award issued in West St. Paul, not cited by the City. See, LELS, Inc. Local 18 and City of Plymouth, BMS Case No. 10-PN-1107 (Latimer, 10/2/10); City of Coon Rapids and LELS, Inc., BMS Case No. 10-PN-0861 (Bard, 8/9/10); City of Mounds View and LELS, Inc., Local 204, BMS Case No. 10-PN-0957 (Miller, 9/29/10); City of Isanti and LELS, Inc., Local 217, (Miller, 9/28/10); Hennepin County and Hennepin County Deputy Sherriff's Association, BMS Case No. 10-PN-0776, (Jacobs, 9/7/10); Teamsters Local 320; The Metropolitan Council Metro Transit Police Department, BMS Case No. 09-PN-833 (Fogelberg, 6/28/10); and City of West St. Paul and LELS, Inc. Local 72, BMS Case No 09-PN-1062 (Miller, 1/19/10)

Employer Position

The following is the City's final position sent to the Commissioner:

No change from historic voluntary past practices of the Union and City to change wage rates annually by the same percentage provided/negotiated for all other City employees.

Following opening statements at the hearing, the City advised that it agreed to a two year duration for the Contract, and, based upon changed and improved circumstances with the City's finances, its final position was now to pay an increase in wages of .5% beginning on July 1, 2010 and an additional .5% beginning on January 1, 2011. It stated that all City employees had received the same increase along with a \$25 increase in insurance contributions.

The City argues that its proposed list of six comparable city police units as well as its financial position support the increase it agrees to provide. It sees the suburbs contiguous to it as being within the City's "realm of influence" and therefore appropriate external comparables. It asserts the Union's comparables are inappropriate and not worthy of consideration since the Stanton Group is out of business. It argues that total top compensation, including wages and all benefits, is the appropriate comparison. Based on its proposed list of comparables, it asserts that the City of Edina Police Officers are at or close to the top among their peers in total top compensation.

With regard to its ability to pay, the City does not deny that it can afford the increases the Union seeks. At the same time, it argues that its offer will permit it to maintain a balanced budget. It takes the position that the proper question here is whether, in this dire economic time, the City should pay the increase. In support of its position, the City points to interest Awards issued in 2010, which involve a variety of political subdivisions and bargaining units. The six cases are referenced and cited above at page 9. The City argues that there is uniform recognition among arbitrators that the times have changed with regard to analysis in interest arbitration, and asserts that this matter should be regarded the same as those several cases where bargaining units have been awarded no or minimal increases. It points to limited comparable information available for 2011 since few wage settlements have been reached either by Award or bargaining.

The City emphasizes what it asserts is common knowledge with regard to the state of the economy in Minnesota, the country and the world. It suggests that to provide an increase in pay, beyond its suggestion, in this "state of economic malaise" would be error.

Finally, the City suggests that Pay Equity issues could arise if the requested increases were provided.

Award

The salary schedule set forth at Appendix A to the party's Contract for 2010-2011 shall be revised to increase by 3% for 2010, and by 3% for 2011.

Appendix A to this Award provides the detail for wage totals for years 1-5 beginning on January 1, 2010 and 2011. It also includes paragraph numbers 2 and 3 which provide for additional hourly and monthly wages for certain classifications and assignments, consistent with the parties' CBA for 2008 and 2009 at Appendix A.

The increase for 2010 shall be retroactive to January 1, 2010.

Discussion

This Award is the result of careful and complete review of the entire record made at hearing together with the arguments made by the parties' representatives in their post-hearing Briefs. In addition, every interest arbitration award cited by the parties has been studied and considered along

with additional interest arbitration matters heard and decided in Minnesota in 2010, one of which was likely posted at the Bureau of Mediation Service website following the hearing of this matter. See, City of Shakopee and LELS, Inc., Local 260, BMS Case No. 10-PN-0959 (Lundberg, 10/8/10); City of Brainerd and LELS, Inc., Local 65, BMS Case No. 09-PN-0550, (Boldt, 5/2/10); and LELS, Inc., Local #328 and Centennial Lakes Police Department , BMS Case No. 99-PN-0840, (Daly, 3/21/10).

Each factor traditionally considered by labor arbitrators, and as discussed above, has been considered. General statements will not be repeated here nor will there be further discussion of factors not determinative of the outcome. Instead, application of the factors to this unique case will be addressed. It is indeed clear that the times have changed and analysis is not what it was even a few years ago. The focus is upon financial matters including ability to pay which, in this case, ultimately supports comparison among peers.

More than one dozen interest awards have been issued in Minnesota in 2010 to date. The awards reflect thoughtful consideration of the facts in each case and address them in the context of the state of the economy as it has impacted the particular employer. There is commonality among the vast majority of the cases because of the severe cuts experienced as a result of drastic reductions in State funding. There is a wide range of other economic factors which have been specifically addressed as well. They include diminished property values and tax revenues; reduced tax capacity and assets including fund balances; reduced workforce; the CPI and private sector wage decreases; unemployment in the community; and one time infusions of revenue from federal stimulus money, extraordinary transactions or unexpected revenue which cannot be depended upon for the future. Arbitrators have considered projections and apparent “threats” to the economic well-being of an employer. They have based their decisions on lack of data, refusal to speculate or project the future, and upon the fact that the bargaining unit in question was the last of several to be settled in a county, compelling conformity with internal units.

Arbitrators have spent considerable time with the data with which they have been presented, comparing percentages of increases and ranking among comparables. They have disputed the validity of averaging and have addressed whether and to what extent longevity pay should be considered along with base wages. They have rejected comparison of total package compensation and recognize internal comparisons among bargaining units and, most often, where benefits are at issue. They have expressed opinions which suggest the theory of comparability simply does not exist in this economy, that political subdivisions present such a distinct set of financial facts that it is impossible to meaningfully or accurately compare them. Attempts to compare cities with other political subdivisions such as counties have been rejected as having never been appropriate. To the extent that external comparables are considered, there is a tendency to look at and favor percentages which comparable parties have bargained for or received through arbitration as opposed to actual wages. One arbitrator proclaimed that interest arbitration is not the place to improve rank among comparables but, if at all, to ensure that rank is maintained.

Clearly the circumstances within which a particular case has arisen is important, including bargaining and contract history, the dates of the filing for arbitration and the hearing and the data available at the time. In several cases, a contract with a one year duration was either requested or awarded. In one case, a wage re-opener was provided in the second year adopting the city’s position and request.

The manner in which the several cases have been reasoned has been instructive and has underscored the need to explore different approaches while providing a challenge to proceed

appropriately and consistent with the statutory language which was adopted for all time, not only for a set of financial circumstances that were and are no longer. It has become necessary to actively recognize that an arbitrator is neither prescient nor a policy-maker. The Arbitrator is grateful to her colleagues for fresh thoughts and cogent analysis which have led to and provide support for the conclusions reached in this case. Arbitrators Bard and Miller writing in the Coon Rapids and West St. Paul cases discuss the propriety of focusing upon *present* ability to pay and the lack of a level playing field calling for recognition of the uniqueness of a city's financial situation. Former St. Paul Mayor Latimer carefully concluded that the City of Plymouth had the ability to pay the requested increase for 2010 then denied the request:

..... While Plymouth certainly has the ability to pay the Union's proposed increase, it must be acknowledged there are real threats to the City's continuing economic health. These include the changes in distribution of property tax burden, the greater city contribution to county costs, and other trends highlighted by the City.

The fiscal considerations outlined above, along with the favorable position enjoyed by this unit both internally and externally, outweigh the City's 'ability to pay' the Union's proposed increase.

City of Plymouth Interest Award *supra* at page 9

The same analysis in this case supports the Union's requests. The Arbitrator agrees with the Union's arguments in support of its position.

External Comparables; Ability to Pay; Other factors

Although the Union's external comparable data has been favored over the City's proposed list for the reasons set out above at pages 6 and 7. This Award is supported by information provided by both parties. By awarding this unit a 3 percent increase in base wages for each of the Contract years, the City of Edina police unit is likely to maintain its ranking based on top pay among both parties' lists of comparables. In the event comparable units settle for 2010 or 2011 at rates at or above that which it has been awarded here, the City's ranking will fall for one or both contract years.

Bloomington, St. Louis Park, Eden Prairie, Edina and Minnetonka are comparable in many ways, and Edina will continue to rank fourth among them based upon top rate pay for police officers. This assumes no increase in Eden Prairie for 2011, which seems unlikely. It also assumes no extraordinary increase among the balance of the Union's external comparables to raise another city's rank above the City's five comparables or Edina.

Final computations to support this Award were derived using the Union's figures for maximum (top base) pay for 2010 and 2011. An assumption was made that there would be no increase in police pay for 2011 where no data has been provided. It is noted that the data only includes wage rates for 15 of the 22 comparison cities for 2010 and 4 of the 22 for 2011. The 2010 data includes information for all of the City's list of comparables except Hopkins which is lowest on its list. The 2011 data includes information for Bloomington, St. Louis Park, Oakdale and Woodbury. Three of those four police units received increases in 2011: Bloomington – 3.5%; Oakdale – 1.5%; and St. Louis Park – 2.25%. The following charts the City's comparables (except Hopkins) and includes the City of Edina with a 3% increase, by top hourly wage and rank among them in 2010 and 2011:

SALARY COMPARISONS

	<u>2010</u>		<u>2011</u>
Eden Prairie	36.56	Bloomington	37.55
Bloomington	36.27	Eden Prairie	36.56*
St. Louis Park	35.30	St. Louis Park	36.09
Edina	33.02	Edina	34.02
Minnetonka	31.95	Minnetonka	31.95*
Richfield	31.89	Richfield	31.89*

*** unsettled and assumed to be 0 increase**

The average hourly top wage among the Union’s comparables for 2010 and 2011 is 33.34 and 33.51 respectively (assuming 0 increase for 11 of the 15 cities for whom 2010 data is available). The City’s top wage with 3% increase, as noted above, places it in 8th position in 2010 and 5th position in 2011.

Union Book Tab 2

The City has emphasized parity among its list of comparables with regard to Total Tax Capacity and Total Market Value. The Union’s Tax Capacity data for 2009, places Edina fourth among the Union’s 22 comparables and third among the City’s list behind Bloomington and Eden Prairie and just ahead of Minnetonka. Edina is ranked second behind Bloomington and just ahead of Eden Prairie in terms of Market Value. Both measures are considered in the determination of bond ratings and are therefore important in demonstrating financial strength.

The Arbitrator acknowledges that arbitrators in other cases decided in 2010 have declined to provide a contract which extends through 2011, or to award an increase for 2011, because of limited comparable data. In this case, financial data and testimony provided by the City supports a conclusion that the City has the ability to pay an increase in both contract years, and that it is proper and consistent with all legal requirements and guidelines. The City’s relative rank among the cities listed on both its and the Union’s list of comparables will, at best, be maintained with the increase awarded for 2011. No evidence has been provided to support a conclusion or even suggest that the City will not or cannot maintain a balanced budget in both years with these increases. Nor is there evidence of any other economic factor which challenges this decision. Detailed coverage of the City’s financial status has been provided including highlighting of growth in assets and fund balances, 2009 budget results and 2010 performance which support these increases.

Issues 4 and 5 – Insurance – Amount of Employer Contribution, 2010 and 2011- Article XVII

Union Position

The following is the Union’s position sent to the Commissioner:

The Employer will contribute \$900.00 per month in 2010 for City provided employee benefit coverage, and life insurance, and for optional benefits offered by the City through its flexible benefit plan. Effective January 1, 2011, the bargaining unit will receive an increase in the employer contribution equivalent to sixty percent (60%) of the increased premium cost for that year in addition to the \$900.00 monthly contribution.

The Union supports its request with data prepared by the City which reflects significant increases in the cost of health insurance for City employees for 2010 and 2011. The various plans available to employees will see premium increases ranging from highs of 15.63% and 10.13% for 2010 and 2011 respectively. It seeks contract language which increases the City's contribution in the first year of the Contract from \$725. to \$900. and changes the manner in which the contribution is determined for the second year of the Contract. It argues that the current CBA provision which requires conformity to any increase received by all City employees denies the unit its right to bargain for the benefit and is inappropriate. It points to the City's ability to pay the increases it requests and the fact that the bargaining unit will fall behind to the extent increased insurance costs are not compensated by the City. It takes the position that the City is not contributing to insurance costs consistent with comparable cities. The Union has provided wage and benefit data for 2007 for its list of comparable cities.

Employer Position

The following is the Employer's position sent to the Commissioner:

Final Position of City of Edina: No change from historic voluntary past practices of the Union and City to provide consistency of City contribution for insurance for all City employees.

At the opening of this hearing, the City advised that it had revised its position with regard to its insurance contribution and that it would be consistent with the \$25. per month contribution which all City employees received for 2010 and will receive for 2011. The City urges parity among all City employees referring to past practice. Its City Insurance Contribution exhibit provides information for its seven comparable cities and the following statement relative to the City's contribution to this bargaining unit: "2009 Employer contribution was \$750, 2010 it was \$775 and for 2011 it is \$800". An amended document was submitted with the City's closing Brief to provide corrections to the document presented at the hearing.

Award

The parties Contract for 2010 and 2011 shall be amended to read as follows:

Article XVII Insurance - Amount of Employer Contribution

The Employer will contribute \$775.00 per month in 2010 for City provided employee benefit coverage, and life insurance, and for optional benefits offered by the City through its flexible benefit plan. Effective January 1, 2011, the bargaining unit will receive an increase in the employer contribution equivalent to that amount approved by the City Council for all other employees.

This provision shall be retroactive to January 1, 2010.

Discussion

This Award adopts the City's position verbally provided at this hearing. The evidence does not demonstrate that all City employees have received the same insurance contribution in every fiscal year. The Union's document submitted in support of its request lists contributions beginning in 2000. The past three two-year contracts beginning in 2004, demonstrate a pattern which provides for a fixed amount in the first year and an increase in the second year consistent with that which the City Council approves for all other employees. The record does not otherwise reflect bargaining history or data for other bargaining units or nonunion employees. It appears that the first year fixed amounts in previous years were the result of negotiation between these parties.

The issue of health insurance provisions in CBAs has received significant attention in recent years. There is no question that insurance costs have risen dramatically, adversely impacting both parties. Benefits customarily follow internal comparables particularly among bargaining units. There are many practical and understandable reasons for internal parity and consistency especially in the provision of health insurance, which relate to equity, workplace harmony and administrative ease. Once again, this record contains limited information with regard to the City workforce. In addition, neither of the parties' external comparable information permits translatable current comparison.

While the increases received by the bargaining unit in 2004, 2006 and 2008 reflect considerably larger fixed amount increases than the \$25 awarded here, the Union has failed to support its request. The City's ability to pay the requested increases has been demonstrated, however, the Union has failed to tie its demand for a \$150. increase in 2010 to demonstrated need for this bargaining unit. Its argument that it will go backward without the increase is diminished by the award of wages made here. An Award cannot be based upon speculation or bald statements. It is inappropriate to provide through arbitration that which has not been shown to have been reasonably achieved through bargaining.

Issue 6 – Shift Differential – NEW

Union Position

The following is the Union's position sent to the Commissioner:

Employees will be paid an additional sixty-five cents (\$.65) for all hours worked between 1800 and 0600 p.m. and 6:00 a.m.

The Union argues that provision of differential pay is appropriate to compensate for greater risk on the second shift and provides some incentive for officers to work the shift. Its list of 22 comparables reflects that only two of the 22 cities provide differential pay for the night shift including Oakdale which has not been included on its list in the past.

Employer Position

The following is the Employer's position sent to the Commissioner:

Final position of City of Edina: No change from historic past practices and agreements of Union and City to avoid payment of shift differentials.

The City asserts that the Union's request demonstrates lack of gratitude for the City's decision to provide two 12 hour shifts at the Union's request.

Award

The Union's request for a new provision which provides for pay differential is denied.

Discussion

The Union has the burden to demonstrate a compelling reason to add new contract language. It has not met its burden. While concrete information relative to the actual impact of providing for differential pay may have supported the Union's case, it is doubtful that the Arbitrator would have agreed to impose this new provision through arbitration. There is no evidence of provision of differential pay for any other bargaining unit in the City. Only two of the Union's list of 22 comparable cities provide differential pay. This is a matter necessarily left to negotiation between the parties. It is noted that there has been no evidence of past practice or any agreement with regard to provision of differential pay.

Dated: December 7, 2010

Janice K. Frankman, J.D.
Labor Arbitrator

APPENDIX A

1. Wages for 2010 and 2011

	January 1, 2010 (3%)	January 1, 2011 (3%)
Start	\$50,064.78	\$51,566.73
Year 1	\$53,389.05	\$54,990.73
Year 2	\$60,062.87	\$61,864.76
Year 3	\$66,736.90	\$68,738.59
Year 4	\$68,071.22	\$70,113.36
Year 5	\$68,690.19	\$70,750.90

2. Employees classified as a Field Training Officer shall receive \$5.00 per hour (while performing the duties of Field Training Officer) in addition to their regular wages for 2010 and 2011.
3. Employees assigned as Training Officer, School Liaison, Detective, or Narcotics Officer shall receive an additional \$375.00 per month in addition to their regular wages in 2010 and 2011.