

BEFORE THE ARBITRATOR

In the Matter of the
Arbitration between

CITY OF INVER GROVE HEIGHTS,
MINNESOTA

And

BMS Case No. 10-PN-1058

LAW ENFORCEMENT LABOR SERVICES, INC.
LOCAL NO. 84

INTEREST ARBITRATION AWARD

Appearances:

Attorney Scott M. Lepak, Barna, Guzy & Steffen, Ltd., on behalf of the City.

Mr. Adam Burnside, Business Agent on behalf of Law Enforcement Labor Services, Inc.,
Local No. 84.

Authority of Arbitrator:

Law Enforcement Labor Services, Inc. Local No. 84, hereinafter referred to as LELS, is the exclusive bargaining representative for 26 employees in the classification of police officer, as defined by Minn. Stat. Subsection 179A.03, subd. 8 (2009), employed by the City of Inver Grove Heights, Minnesota, hereinafter referred to as the City. The parties, have been parties to a series of collective bargaining agreements throughout the years, the most recent being an expired agreement ending December 31, 2009. The parties entered into negotiations for a successor agreement. They were unable to resolve two issues. As a result, on May 26, 2010, the Commissioner of the Minnesota Bureau of Mediation Services received a written request from LELS and on June 9, 2010, a request from the City to submit contract negotiations to conventional interest arbitration. On June 15, 2010, the Commissioner certified two issues at impasse for binding interest arbitration pursuant to M.S. 179A.16, subd. 2 and Minn. Rule 5510.2930: Wages – Amount of General Increase, If Any for 2010 – Article 26; and Insurance – Health and Welfare, Amount of City Contribution, If Any, for 2010 – Article 27.

The parties selected the undersigned from a panel provided by the BMS. Hearing was held in Inver Grove Heights, Minnesota at 10:00 a.m. on November 15, 2010. No issues of negotiability were raised. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on December 1, 2010 and the record was closed. Now, having considered the evidence adduced at the hearing, the

arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

FINAL POSITIONS OF THE PARTIES

Wages:

Union Position – Article 26 – Wages – Appendix A

1/1/2010 Wage Schedule

	Start	6 months	1 year	2 years	3 years
Hourly	\$ 23.11	\$ 26.35	\$ 29.58	\$ 30.90	\$ 32.10
Monthly	\$4,006.00	\$ 4,567.23	\$ 5,126.70	\$ 5,355.41	\$ 5,564.77
Annual	\$48,072.02	\$54,806.75	\$61,520.37	\$64,264.93	\$66,777.26

City Position – The City is not proposing any increase to the Wage Schedule.

	Start	6 months	1 year	2 years	3 years
Hourly	\$ 22.77	\$ 25.96	\$ 29.14	\$ 30.44	\$ 31.63
Monthly	\$ 3,946.80	\$ 4,499.73	\$ 5,050.93	\$ 5,276.27	\$ 5,482.53
Annual	\$47,361.60	\$53,996.80	\$60,611.20	\$63,315.20	\$65,790.40

Insurance:

Union Position – Article 27 – Insurance

27.1 All eligible employees shall be offered participation in the employer's health insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provision of the City personnel policies. The total EMPLOYER contribution towards the employees' group health insurance premiums during the term of this agreement are inclusive of the amounts defined in 27.2.

In 2010 the Employer will contribute up to \$607.03/month for employees choosing single coverage in the Buy Up or 250/25 plans and up to \$675.87/month for employees choosing single +1 coverage or family coverage in any of the positioned plans. In 2010, the contribution of \$433.08/month for employees choosing single coverage in the HRA/HAS high deductible plans. The Employer will make an additional contribution of \$110.53/month to the employee's HRA/HAS account for those employees choosing single coverage. The EMPLOYER will make an additional contribution of \$100/month in 2010 to the employee's HRA/HAS account for employees choosing single +1 or family coverage.

City Position – Insurance – Health and Welfare, Amount of City Contribution, If Any, for 2010 – Article 27

27.1 All eligible employees shall be offered participation in the employer's health insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provisions of the City personnel policies. The total EMPLOYER contribution towards the employee's group health insurance premiums during the term of this agreement are inclusive of the amounts defined in 27.2.

In 2010 the EMPLOYER will contribute up to \$581.97/month for employees choosing single coverage in the Buy Up or 250/25 plans and up to \$675.87/month for employees choosing single + one or family coverage in any plan. The EMPLOYER will contribute up to \$433.08/month for employees choosing single coverage in the HRA/HAS high deductible plans. The EMPLOYER will make an additional contribution of \$110.53/month to the employee's HRA/HAS account for those employees choosing single coverage. The EMPLOYER will make an additional contribution of \$100.00/month to the employees HRA/HAS account for employees choosing single + 1 or family coverage.

27.2 The EMPLOYER will provide a Flexible Compensation or Cafeteria Insurance Program in the amount of three hundred thirty dollars (\$330.00) effective January 1, 2010 through the duration of the contract, for each full-time employee. In 2010 for employees choosing single coverage in the HRA high deductible plan, the EMPLOYER will contribute an additional \$56/month.

27.3 The EMPLOYER will select and provide the employee with long term disability insurance, accidental death and dismemberment and term life insurance in an amount equal to the employee's annual base salary.

27.4 Temporary employees are not eligible for benefits under this article.

APPLICABLE LEGAL STANDARDS

Arbitrators in interest arbitrations in Minnesota generally consider the following factors: (1) internal pay equity, (2) external market comparisons, (3) the employer's ability to pay, (4) the cost of living and purchasing power, and (5) other economic factors such as the difficulty in hiring, turnover, retention rates, state of the national, state and local economies, etc.

BACKGROUND

The City of Inver Grove Heights is a suburb of the Twin Cities Metro Area located in Dakota County with a population of approximately 34,000. It operates a police

Department and LELS represents the 26 full-time police officers of which 22 are males and 4 are females. The police officer's position is a male-dominated job classification subject to Minnesota's pay equity laws.

The City, in addition to this bargaining unit, has non-union employees and three other bargaining units consisting of the (1) police sergeants, (2) the clerical/technical/professional group and (3) the streets/parks/maintenance/golf group.

The City has unilaterally imposed its wage and health insurance position upon the non-represented employees. The police sergeants, consisting of 4 employees who are the supervisors of the employees in this bargaining unit, have settled for a wage freeze in 2010 and the City's proposed health insurance modifications. The other two groups remain unsettled at this time.

Insofar as external market comparisons for compensation purposes are concerned, the most recent past award in 2004 by Arbitrator Richard John Miller cited the DCA Stanton survey Group 5 which includes suburbs with over 25,000 residents as being appropriate. The City with approximately 30,000 residents at that time fell within the lower end of the Stanton Group 5.

The City on its own initiative determined that many of the comparable cities in the Stanton Group 5 were much larger than Inver Grove Heights, some with populations of 85,172, 71,225, and 70,238 as noted in 2005 while certain Group 6 cities such as Savage and White Bear Lake, both with 2005 populations of around 24,850 and 24,625 were much closer in size to Inver Grove Heights. The City also believed that the Stanton Group 5 was too large of a sample (27 cities). In December of 2007 the City by formal City Council action adopted its own comparable group from the 2006 census information for use in negotiations. This group consisted of Andover (29,262), Brooklyn Center (29,005), Cottage Grove (31,774), Fridley (27,008) Richfield (34,496) Roseville (34,080), Shakopee (28,913), Shoreview (26,381), Rosemount (17,740), South St. Paul (20,249), and West St. Paul. Andover and Shoreview do not have their own police departments and are not relevant in the instant case. Rosemount, South St. Paul and West St. Paul have much smaller populations than Inver Grove Heights, and are deemed not as relevant as the other cities with whom the City has chosen to make comparisons. Accordingly, it is the Stanton Group 5 which will serve as the external market comparisons.¹

ISSUE 1 - WAGES

LELS is proposing a 1.5% increase over 2009 wage rates found in the collective bargaining agreement while the City is not proposing any increase to the 2009 wage schedule.

¹ See Arbitrator James Lundberg's Award in *Law Enforcement Labor Services, Inc and City of Shakopee*, BMS 10-PN-0959 (Oct. 2010), p.14, reaffirming the old Stanton Group 5 as the appropriate set of external comparables.

Internal Pay Equity - An analysis of this factor involves evaluating whether a settlement pattern exists internally within the City, i.e. internal comparability, and review of the parties' proposals insofar as they comport with the Minnesota Pay Equity Act.

The fact that the City has chosen to refrain from giving its unrepresented nonunion employees a wage increase only carries weight insofar as it might provide evidence with respect to pay equity considerations. This is the case because those employees must accept the terms and conditions of employment positioned by the City when it comes to compensation.

It is the City's represented bargaining units which impact upon a party's claims that internal comparability supports its position. Of the City's represented bargaining units, only the police sergeants have settled. As the City observes, this is the group most closely aligned with the police officers because they are the individuals who directly supervise the police officers. The police sergeants are also essential employees who work within the same department, generally sharing a community of interest with the police officers. There is also an institutional interest in maintaining a consistent level of compensation separation between the two classifications because compression will result in disincentives for advancement to the higher level position. However, there are only four employees in the police sergeant's bargaining unit as opposed to 26 in the police officer's bargaining unit. As at least one other interest arbitrator has noted "...the smallest group of unionized employees should not exclusively dictate the terms and conditions of the largest group in the City."²

The Union argues that there has not been a consistent pattern of increases within the City since 2005, noting that the police officer and sergeants settlements differed in 2007 and 2009. It is significant that only one bargaining unit has settled so that there is really no internal wage settlement pattern that can be referenced. The police sergeant settlement is entitled to some weight but as a single settlement may not be accorded the status of a wage settlement pattern, and is not determinative.³

With respect to pay equity considerations, the City acknowledges that it will not be out of compliance with the Pay Equity Act no matter which position is awarded. As with the discussion of internal settlement comparables, the City's wage position is slightly preferable with respect to pay equity because the LELS' wage position would move a group that is already ahead of its predicted pay slightly further ahead to the detriment of internal equity. Given that there is compliance under either proposal, the pay equity considerations are not determinative. Based upon these conclusions and the fact that various interest arbitrators have declined to give much weight to internal comparisons in making an award on wages preferring to rely upon the marketplace, i.e.,

² *City of Isanti and Law Enforcement Labor Services, Inc. Local No. 217*, BMS 10-PN-1306 (September, 2010) p.4.

³ See *City of Shakopee*, at p. 19.

external comparables over internal comparables,⁴ internal pay equity is not determinative in the selection of the parties' wage proposal.

External Comparables - The City has argued that it retained its general position since the prior arbitration award in 2003 through 2009 but that there are not a sufficient number of settlements for 2010 to form a precise measurement and for that reason, external comparables should be a lesser factor. It also argues that because of multiple year contracts, year to year measurements are not accurate and that interest arbitration is not an appropriate tool for fine tuning market position to match average general increases among the comparable group. It points out that settlements reached prior to October of 2008 do not reflect the current economic realities.

Looking at the Stanton Group 5 comparables, certain key cities have not settled for 2010. They are Blaine, Brooklyn Park and Edina which have historically paid more than Inver Grove Heights and Cottage Grove, Fridley and Roseville which have historically paid significantly less. For top pay assuming that Blaine, Brooklyn Park and Edina settle or receive arbitration awards that restore them to their historical position ahead of Inver Grove Heights in the same manner as in 2009, then for 2010 Inver Grove Heights will rank 18th out of 24 cities.

With respect to the top wage ranking, the City ranked 19th out of 25 in 2008, and 17th out of 25 in 2009 (or 18th out of 24 with St. Cloud being excluded). For 2010, assuming that all of the unsettled comparables will come in at less than Inver Grove Heights with no wage increases granted, Inver Grove Heights rises to 14th out of 25 accepting the 1.5% proposed by LELS. Inver Grove Heights would fall to 18th out of 25 under the City's 0% proposal. When viewing relationships to the average for the top wage, Inver Grove was -2.24% from the average in 2008, -2.01% from the average in 2009, and under the LELS proposal, it will be -2.16%. With a 0% increase proposed by the City, Inver Grove Heights' relation to average will drop to -3.70%. For top pay at least, LELS stresses that an award in its favor would only keep the Inver Grove Heights police officers in their relative place, while the City's proposal would push them further below the average.

It is true that the large number of unsettled cities make it hard to draw concrete conclusions as to how Inver Grove Heights will ultimately fare vis-à-vis the rankings. It is also true that 10 of the external comparables are settled with no general increase on the wage schedule. However, from the data available, it is concluded that the LELS wage proposal at least with respect to the top wage is preferred because it will better enable the City to maintain wages closer to the average of the comparables. With a 0% increase proposed by the City, the Inver Grove Heights police fall further from the average. External comparables favor the LELS proposal.

⁴ See *City of Coon Rapids and Law Enforcement Labor Services, Inc.*, 10-PN-0861 (Bard, July, 2010); *Law Enforcement Labor Services v. City of Mendota Heights*, BMS 01-PN-968 (2001) and *Law Enforcement Labor Services, Inc. and City of Belle Plaine*, BMS 06-PN-479 (Boyer, 2006).

There does not, however, appear to be any problem for the City in hiring or retaining employees under the current wage schedule. This factor favors the City because it does appear that even with the wage schedule freeze, the City remains competitive in the labor market.

Ability to Pay and City's Economic Status - The City argued that the traditional "ability to pay" concept must include considerations beyond the simple question of whether an award would bankrupt the employer. LELS insists that the City has adequate resources to support LELS' wage proposal and that it has conceded an ability to pay the wage increases proposed by LELS. The difference in the wage positions of the parties is not great, \$25,658,129, but it is a continuing cost. Including the difference in the costs of the health insurance proposal, \$31,071.32 is the total sum separating the parties.

Whether the City is in an economic position to pay the proposed increases ultimately depends on its financial status. Furthermore, since the economic downturn of 2008, many arbitrators are focusing their attention on this factor as the most significant and determinative factor on economic issues. Arbitrator Fogelberg in *Teamsters Local 320 and the Metropolitan Council Metro Transit Police Dept.*, BMS 09-Pn-0267 (June, 2009) stated this change in emphasis most succinctly:

The history of interest arbitration in this state demonstrates that in the past, while the reviewing neutral would most certainly examine and reflect on an employer's ability to fund either side's position, it was often not the criterion given the greatest weight. This was due in no small measure, to the relative financial health of the employer and inter alia, the state's economy. Rather, it was the external market conditions for years, that seemed to be the most influential factor in the course of an arbitrator's deliberations. Indeed, on many occasions, the employer would acknowledge that their ability to pay was not an issue.

Unfortunately, that has changed.

One would have to have been in a coma for the past few years in order to legitimately claim ignorance over the current economic condition. Not only in this state, but nation, if not world-wide. It is not necessary then to expound upon the eroding economy here. Suffice to say that the existing recessionary climate in which public employers operate today, and the relative hardships that this has caused and continues to cause, heighten the arbitrator's consideration of the statutory mandate of public employers to "...efficiently manage and conduct their

operations with the legal limitations surrounding the financing of (their) operations.”

As Arbitrator Richard John Miller recently stated:

It is undisputed by the parties that our economy whether local, regional, state-wide, or nation-wide is faltering under extreme economic pressures exerted within the United States and internationally. Thus, interest arbitrators can no longer ignore or simply give passive review to the financial condition of an employer. A thorough analysis must be done by an arbitrator to ascertain whether the employer can afford the economic demands being made by a union, and even if the employer has the ability to pay, should the arbitrator exercise financial constraint in his or her economic awards in these unsettled economic times.⁵

There has been wide-spread national unemployment and the state of the national economy is precarious. The State of Minnesota faced a \$3 billion deficit in the 2010 legislative session. The final budget ratified \$2.7 billion of un-allotments made by the Governor including un-allotments to local government aid and market value homestead credit. These were cut by \$52 million in a first supplemental budget bill. Various reports and papers suggest that cities of every size in every region in Minnesota will be “broke” by 2015 if no policy fixes are made and even metro fast growth cities, like Inver Grove Heights, would see deficits approaching 20% of city revenues. Since Minnesota law demands that cities must balance their budgets, there will be a combination of service cuts and property tax increases. Huge state deficits will continue to impact upon the cities.

This concern over finances in general and the national economies notwithstanding, prognostications of future troubles are just that, predictions. It is the present economic condition of the City which must be controlling.⁶ The City of Inver Grove Heights is one of the metro fast growth cities that enjoyed robust growth prior to October of 2008. According to the Comprehensive Annual Financial Report for the year ended December 31, 2009, it has experienced growth in population and development. It has several large industries which account for a significant portion of the City’s commercial tax capacity. Some of the industries are highly automated and consequently are major taxpayers but not major employers. The City also saw \$42 million of new construction in 2009. Residential construction in 2009 included 15 single family residences, a 44 unit senior living project and \$8.8 million of residential remodeling. It also experienced \$4 million in commercial and industrial development.

⁵ *City of Isanti and Law Enforcement Labor Service, Inc.*, BMS 10-PN-1306 (Miller, Sept. 2010) pp 6-7.

⁶ *City of Coon Rapids and Law Enforcement Labor Services, Inc.* BMS 10-PN-0861 (Bard, August, 2010) pp.32-33.

Like other cities in the State, the City did not receive their second half payment for the Market Value Homestead Credit in 2008. The MVHC was not paid in 2009 and will not be paid in 2010. To address these losses the City needed to add an additional \$775,000 in its preliminary levy. Market values of the land within the City declined by 7.4% and the City experienced a 2009 decreased tax capacity by 6.3%. While the City's commercial market value increased by 1.3% and its industrial value increased by 4%, and its utility market value increased by 1.1%, its residential market declined by 9.7% while agricultural value declined by 1.5%. As homes became less affordable, apartment values gained 1.3%.

Like so many other cities, the City's investment income was down by 75%. The City, to address these needs, raised the tax levy and cut expenses. The City raised the levy from \$11,216,758 in 2004 to \$15,212,265 in 2008 and to \$15,475,796 in 2009 while cutting general fund operating expenses by 2%.

The City has spent funds to extend City services to a new area but it has not seen a return on this investment due to the poor economy. In a December 31, 2009 report from the City, it notes that the net assets of the City exceeded its liabilities at the close of the most recent fiscal year by \$159,898,011. Of this amount, \$53,689,271 were unrestricted net assets which may be used to meet the City's ongoing obligations. At the close of that fiscal year, the City's government funds reported combined ending fund balance of \$29,280,307, a decrease of \$1,978,540 in comparison with the prior year. Approximately \$23,886,647 of this amount is available for spending as an unreserved fund balance. At the end of the fiscal year, the unreserved fund balance for the general fund was \$5,598,129 or 37.2% of total general fund expenditures. The City's total debt increased by \$5,580,966 (approx.12%) but the increase was due to the issuance of General Obligation Capital Improvement bonds on May 11, 2009 in the amount of \$9,900,000.

LELS argues that with a fund balance of \$5,598,129 or 37.2% of total general fund expenditures, the City can fund LELS' pay increase because it will have no impact on the City's ability to fund operations. The City, pointing to the increase in total debt and the fact that its fund balance is at the bottom of the State Auditors recommendations for percentage of fund operating revenues resulting in a thin cushion for future expenses, claims that from either a macroeconomic or microeconomic view, it is not well positioned to take on increased continuing obligations such as a wage increase.

The City notes that its undesignated fund balance has declined from December 31, 2009 to August 31, 2010 and is a relatively unstable revenue source. As a pooled amount, it is about \$3.66 million and compares to a total general fund of \$17.4 million, or 21% of the general fund. LELS notes that the City did not provide more recent numbers from the balance for the months of September and October and questions its decision not to do so pointing out that until the 2010 Comprehensive Annual Financial Report is released, no one will know whether the fund balance ended above or below the 2009 amount.

Based upon its net assets from the 2009 Comprehensive Annual Financial Report, it appears that the City is financially healthy and that its population and growth are continuing. It has, however, sustained losses in the revenues from the State's MVHC which it had to address by increased levying. It also appears that its undesignated fund balance is at the lower end of the amount recommended by the State Auditor and that this has left little cushion for future expenses, especially in light of the increased debt as a result of the Capital Improvement Bonds issued in 2009. It has also lost taxable revenues based primarily upon declining residential values. The City has experienced a drop in these revenues from real estate taxes as a result of falling residential and agricultural values which has not been offset by increased commercial and industrial property values. The City's revenues from interest income have also fallen.

From the above data, it is concluded that the City has the ability to pay the modest difference in the two wage proposals. Its general financial condition has left it with little cushion to meet unanticipated expenses as a result of the lower percentage of money being retained in its undesignated fund balance. This, in turn, has resulted in an unwillingness to pay for the LELS proposed wage increase. From all of the above data, it cannot be concluded that the City's financial status is so dire as to warrant a 0% increase, especially in light of the modest cost of the LELS proposal.

Purchasing Power/Cost of Living - Both parties utilize the U.S. Bureau of Labor Statistics Consumer Price Index to make their respective arguments regarding the cost of living. LELS refers to the CPI Midwest Indexes for cities with populations of 50,000-1.5 million (Class B/C) and for cities of less than 50,000 (Class D) while the City cites the CPI- all Urban Consumers. Looking at LELS data for Class B/C cities the CPI for the last 12 months ending in September of 2010 was 1.9%. For the same time period for Class D cities, the CPI was 1.6%. The average CPI for Class B/C for the first 6 months of 2010 was 2.7%. For Class D for the first 6 months of 2010, the CPI was 3.0% with the big increases in the first quarter of the year. Under the data provided by the City, the CPI Urban for the entire year of 2009, the CPI was -0.1. For the first nine months in 2010, the CPI averaged 2.1%.

While there is some merit to the City's argument that the CPI also includes the costs of health-related expenses and services, which should not be considered given the City's provision of health insurance coverage, interest arbitrators invariably consider this standard as a measure of whether the proposed wage increase is reasonable in the context of the increased costs of living. Under any measurement of the CPI, it is evident that LELS wage position is preferred. It is noteworthy that over the past few years, the increases for Inver Grove Police officers have been very close to matching the CPI during those years. The CPI over the last twelve months and more tellingly for the first 9 months of 2010 illustrates how modest a wage proposal the LELS proposal really is.

The City argues that the Social Security Administration's decision to refrain from granting any benefit increases for 2010 is a much better measure of the cost of living than the CPI. The increase or failure to increase these benefits reflects the national economy and federal economic and political considerations rather than the cost of living in any

general geographic area such as the Midwest, nor does it reflect how inflation impacts upon residents in urban areas as opposed to those who live in small cities. Accordingly, the CPI favors LELS wage proposal.

Summary of Conclusions on Issue 1

There is no clear internal settlement pattern, the police sergeants and unrepresented employees being insufficient to establish a settlement pattern. There is no violation of the Minnesota Pay Equity Act under either proposal, although the LELS proposal may slightly exacerbate the City's attempt to bridge the gap. The external comparables favor LELS' proposal because under the City's proposal Inver Grove Heights officers would lose substantial ground in wages as compared the average of the comparables. The City is not in so dire financial straits that it cannot afford the LELS wage proposals given the amount of money in dispute and its overall financial condition, notwithstanding that it has some increased debt and a smaller cushion with respect to its undesignated fund balance. The CPI favors the LELS position on wage increases and demonstrates that it is a modest attempt to keep abreast of inflationary rises in the cost of living.

AWARD

Effective January 1, 2010, increase each cell in the salary schedule listed above as Appendix A by 1.5% as set forth in the LELS proposal for the 2010 collective bargaining agreement.

ISSUE 2 – INSURANCE CONTRIBUTION

The second issue for the arbitration is the City's contribution to the police officer's health and welfare plans. The City currently positions four plans. Two are expensive, the most expensive being the Buy Up Plan. There is also a "\$250-25" plan that it a traditional insurance plan (so named because it has an annual deductible of \$250 per person with a \$25 co-pay in many instances.) The City also positions an HRA (health reimbursement account) VEBA (voluntary employees' beneficiary association trust) plan. The fourth plan is a HDHP 2400-100 with a HAS (health savings plan.)

The current language in the expired 2009 agreement includes a \$330 monthly contribution for each full time employee. Employees choosing single coverage in the HRA high deductible plan receive an additional \$56/month employer contribution.

The parties do not dispute that the health insurance premium for employees choosing single plus one or family coverage in any of the positioned plans should be \$657.87/month. They also agree that the employer contribution toward the single premium in the HRA and HAS high deductible plans should be \$433.08 per month. They also agree that the City should provide an additional contribution to the HRA or HAS accounts of those employees who choose these plans in the amount of \$110.53/ for single coverage and \$110 month for single plus one or family coverage.

The sole issue is the difference in positions with respect to the City contribution toward the single premium for those employees selecting the two most expensive plans. The City is proposing to provide a \$581.97 per month employer contribution toward the single premium for these two most expensive plans, the Buy Up and the 250/25 plans, while LELS is seeking to establish the City's contribution at \$607.03. The cost for the entire single premium for the Buy Up Plan is \$607.03. LELS' position is that the City must continue to pay for the entire cost of insurance for those employees selecting single coverage.

For the first time, the City is proposing to pay less than the full premium for single insurance in the most expensive plan. The City proposal would require an employee contribution of \$25.06 per month toward the premium of the most expensive plan, the Buy Up plan. At the same time the City would increase the total amount allocated to each employee for the high deductible plans by \$57.32 per month over the 2009 levels.

According to LELS, it does not argue with the City's desire to negotiate a change to the past practice of how it provides insurance, but its objection to treating the plans unequally is what has prompted the arbitration. In its view, it is inequitable to provide "the carrot to one group while whacking the others with the stick." The increased allocation to the high deductible plans is being funded out of the pockets of those who want nothing more than to continue with the insurance that they have had for years.

LELS maintains that no data was presented to demonstrate that the greatest utilization comes from the employees in the Buy Up plan nor is there any evidence that those in the high deductible plans are better stewards of their health care dollars. One organized group and the non-union employees do not establish an internal settlement pattern. In LELS view, the City cannot seriously argue that because one group accepted these terms, a pattern has been created. LELS points to the total cost of paying the LELS insurance proposal as being \$5,412.96 and notes that the City has the ability to pay this amount. Only the Union's position appropriately provides for equitable treatment for all employees utilizing single health care insurance. LELS requests fair and equitable treatment for its officers utilizing the single plan.

The City argues that the primary issue for consideration is whether the City should be required to contribute towards the entire premium for employees carrying the most expensive single coverage. The City stresses that internal equity is the key consideration pointing to the police sergeants and the non-represented employees. According to the City, the ferocious national debate over health care has produced a tangible benefit – recognition that the historical approach to health care as the employer's sole responsibility is no longer feasible and that there must be more employee participation. Noting that premiums are driven, in significant part, by utilization, purchasers of the group insurance, i.e., employers, have attempted to persuade employees to be more judicious in the use of health care benefits. A key method is to create a program where employees must decide whether the treatment they wish to have is

“worth” the amount they must co-pay or pay as a deductible. The employees in the two traditional “Cadillac” plans utilized health insurance well beyond the cost of the premium. Those in the Buy Up plan had claims that exceeded premiums by 103.8% from July 1, 2009 to June 30, 2010. The same was true for the \$250-\$23 plan where the claims to premium ratio was 103.6%. In contrast the employees in the HRA plan had a claims to premium ration of 93.3% and those in the HAS plan had a claims to premium ration of 83.5%. Because the premiums for all four plans are tied to the utilization of the group as a whole, the employees who are enrolled in the HRA or HAS plans and are judicious in their usage are suffering for the utilization of others because it is pushing up their rates and pushing the plans closer to the precipice. The City’s argued that this proposed change is an important first step in the process.

The City is barred by statute from discontinuing the “Cadillac” plans, so the only option is to create incentives for employees to move to the more cost participatory plans. They can remain in the Buy Up plan under the City’s proposal, but they will have to pay \$25.06 per month to do so. The other alternative is to choose the less expensive plans and still not pay any amount toward single health insurance. To accept LELS proposal will result in the employees remaining on the most expensive health insurance plan. The City notes that it has increased its contribution toward all premiums but it increased at a greater amount in the employee cost participatory HRA/VEBA plan. The City claims that it has not used a stick but rather an equitable cost sharing approach to premium contribution. The City’s stresses that its contribution toward the single Buy Up plan under its proposal is \$581.97 and this is still greater than the City contribution toward any other single premium. In terms of equitable treatment, the City claims that it is still providing a much greater economic contribution toward the expensive Buy Up plan. The City’s final position will allow employees choosing single coverage to select from three different plans without having to pay any amount toward the monthly premium. Requiring employees who choose to continue with the Buy Up plan to pay \$25.06 per month is a small price to pay for such expansive coverage. Internal equity and public policy strongly supports the City’s final position on this issue.

Summary of Conclusions on Issue 2

The City’s internal equity argument is rejected for the reasons set forth in the Wages analysis. With just the police sergeants and non-represented employees accepting the City’s proposal, the City has failed to establish an internal settlement pattern.

In light of the recent health care reform discussions and the sky-rocketing costs of health care, the City’s offer represents sound public policy. LELS has not presented a strong argument for retention of the *status quo* full payment of all single premiums in light of the rising costs and data regarding health insurance usage. LELS argues that requiring those in the Buy Up plan to make a contribution while increasing contributions for the two least expensive options is unequal and disparate treatment. This is not really the case given the data provided regarding who uses their health insurance benefits as compared to the cost of the premiums. Given this data, it can just as easily be concluded that the greater usage by those with the Buy Up and \$250/\$25 plans drives up the

premium costs for everyone, thus resulting in those employee who opted for the less expensive insurance subsidizing those who retain the “Cadillac” benefits. The City’s proposal requiring those that remain in the most expensive plan to pay more, while rewarding those who have opted for the less expensive plans by a greater contribution can be considered as an attempt to equalize its contribution among all of the affected employees while attempting to contain rising insurance premium costs.

The City, in its proposal, has increased its contribution toward all of the single plans. It is not unreasonable to ask employees in the single “Cadillac” plan to pay a small portion of the expense to remain in said plan. The City’s proposal on health insurance is adopted.

AWARD

Incorporate the City’s proposed health insurance language as set forth above into the parties’ 2010 collective bargaining agreement.

Dated this 10th day of December, 2010, in Madison, Wisconsin.

/s/Mary Jo Schiavoni
Mary Jo Schiavoni, Arbitrator

Certificate of Service

I certify that on the 10th day of December, 2010, I served the foregoing Interest Arbitration Award upon each party to this matter by mailing a copy by certified mail to their respective addresses shown below:

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

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

I further certify that on the 10th day of December, 2010, I submitted this award electronically to the Bureau of mediation services by e-mailing it to Carol.Clifford@state.mn.us.

/s/Mary Jo Schiavoni
Mary Jo Schiavoni, Arbitrator