IN THE MATTER OF ARBITRATION	)	**INTEREST ARBITRATION**
	)	
between	)	
	)	
City of Forest Lake	)	
Minnesota	)	
	)	**BMS Case No.** 10-PN-0853
-and-	)	
	)	
Law Enforcement Labor Services,	)	
Inc., Local No. 111 (Police	)	
Officers Unit)	)	**January 21, 2011**

))))))

Officers, and K-9 Officers. The City Police Department includes a Police Chief, 4 Sergeants, 15 Patrol Officers (2 of which are K-9) Officers), 3 Investigators, and 2 School Resource Officers. There are currently a total of 20 Police Officers in the Bargaining Unit.

The City and Union (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining agreement that was effective January 1, 2008, and remained in full force and effect until December 31, 2009.

The Parties entered into negotiations for a successor collective bargaining agreement. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on September 7, 2010, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On September 21, 2010, the BMS determined that the following items were certified for arbitration pursuant to M.S. 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Duration - Contract Duration - Article 37
2. Wages - Wage Increases 2010 - Appendix A & B
3. Wages - Wage Increases 2011 - Appendix A & B
4. Wages - Wage Increases 2012 - Appendix A & B
5. Insurance - Health Insurance Contributions 2010 - Article 23
6. Insurance - Health Insurance Contributions 2011 - Article 23

7. Insurance - Health Insurance Contributions 2012 - Article 23
8. Dental - Dental Insurance Contributions 2010 - Article 23
9. Dental - Dental Insurance Contributions 2011 - Article 23
10. Dental - Dental Insurance Contributions 2012 - Article 23
11. Retiree Health - Retiree Health Insurance Language - Article 23
12. Post Employment Health Care Savings - Post Employment Health Care Savings 2010 - Article 24
13. Post Employment Health Care Savings - Post Employment Health Care Savings 2011 - Article 24
14. Post Employment Health Care Savings - Post Employment Health Care Savings 2012 - Article 24
15. Severance - Severance Payout - Article 11

The Parties selected Richard John Miller to be the sole Arbitrator from an arbitration panel submitted by the BMS. A hearing in the matter convened on December 20, 2010, at 9:00 a.m. at the Forest Lake City Hall, 220 North Lake Street, Forest Lake, Minnesota. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions.

The Parties elected to file post hearing briefs with an agreed-upon submission date of January 3, 2011. The post hearing briefs were submitted in accordance with those timelines and received by the Arbitrator by e-mail. The Arbitrator then exchanged the post hearing briefs to the Parties' representatives by e-mail on that same day, after which the record was considered closed.

ISSUE ONE: DURATION - CONTRACT DURATION - ARTICLE 37

POSITION OF THE PARTIES

If the Arbitrator awards the City's position to sunset the retiree health insurance language (Article 23.4) in Issue 11, the City proposes a three year agreement from January 1, 2010 to December 31, 2012.

If the Arbitrator awards the Union's position of no change to the contract language in Article 23.4, the City's position is for a two year contract (January 1, 2010 to December 31, 2011).

The Union's position is for a three year contract from January 1, 2010 to December 31, 2012.

ISSUE TWO: WAGES - WAGE INCREASE 2010 - APPENDIX A & B
ISSUE THREE: WAGES - WAGE INCREASE 2011 - APPENDIX A & B
ISSUE FOUR: WAGES - WAGE INCREASE 2012 - APPENDIX A & B

POSITION OF THE PARTIES

If the Arbitrator awards the City's position to sunset the retiree health insurance language (Article 23.4) in Issue 11, the City proposes a 0% wage increase for 2010, 1.5% for 2011, and a 3% for 2012.

If the Arbitrator awards the Union's position of no change to the contract language in Article 23.4, the City's position is for a 0% wage increase for 2010, 2011, and 2012.

The Union's position is for a 0% wage increase for 2010, 1.5% for 2011, and a 3% for 2012.

ISSUE FIVE: INSURANCE - HEALTH INSURANCE CONTRIBUTIONS 2010 - ARTICLE 23

ISSUE SIX: INSURANCE - HEALTH INSURANCE CONTRIBUTIONS 2011 - ARTICLE 23

ISSUE SEVEN: INSURANCE - HEALTH INSURANCE CONTRIBUTIONS 2012 - ARTICLE 23

POSITION OF THE PARTIES

If the Arbitrator awards the City's position to sunset the retiree health insurance language (Article 23.4) in Issue 11, the City proposes a $25 increase per month in the Employer's contribution for health insurance for 2010, a $50 increase per month for 2011, and a $50 increase per month for 2012.

If the Arbitrator awards the Union's position of no change to the contract language in Article 23.4, the City proposes a 0% increase per month in the Employer's contribution for health insurance for 2010, a 0% increase per month for 2011, and a 0% increase per month for 2012.

The Union's position is a $25 increase per month in the Employer's contribution for health insurance for 2010, a $50 increase per month for 2011, and a $50 increase per month for 2012.

ISSUE EIGHT: DENTAL - DENTAL INSURANCE CONTRIBUTIONS 2010 - ARTICLE 23

ISSUE NINE: DENTAL - DENTAL INSURANCE CONTRIBUTIONS 2011 - ARTICLE 23

ISSUE TEN: DENTAL - DENTAL INSURANCE CONTRIBUTIONS 2012 - ARTICLE 23

POSITION OF THE PARTIES

If the Arbitrator awards the City's position to sunset the retiree health insurance language (Article 23.4) in Issue 11, the City proposes a $0 increase per month in the Employer's contribution for dental insurance for 2010, a $5 increase per month for 2011, and a $5 increase per month for 2012.

If the Arbitrator awards the Union's position of no change to the contract language in Article 23.4, the City proposes a $0 increase per month in the Employer's contribution for dental insurance for 2010, a $0 increase per month for 2011, and a $0 increase per month for 2012.

The Union's position is a $0 increase per month in the Employer's contribution for dental insurance for 2010, a $5 increase per month for 2011, and a $5 increase per month for 2012.

ISSUE ELEVEN: RETIREE HEALTH - RETIREE HEALTH INSURANCE LANGUAGE - ARTICLE 23

POSITION OF THE PARTIES

The Union's position is to retain the current contract language in Article 23.4 as follows:

> After thirty (30) years of employment with the City of Forest Lake, the employee, who retires from the City, may continue in the City's group medical-hospitalization insurance plan, with the same City coverage towards premium as eligible active employees. The employee's right for City-contribution towards premium in such group insurance

will be discontinued at the end of the month after ten (10) years of retirement. If the employee becomes eligible for Medicare during the ten year benefit period, the Employer will contribute toward the cost of a Medicare supplement plan of the Employee's choice, up to the amount of the Employer contribution towards the health insurance premium, in-lieu of the group health coverage.

The City's position is to change the contract language in Article 23.4 to reflect the following:

> Employees hired prior to January 1, 2010, after thirty (30) years of employment with the City of Forest Lake, and who retires from the City, may continue in the City's group medical-hospitalization insurance plan, with the same City coverage towards premium as eligible active employees. The employee's right for City-contribution towards premium in such group insurance will be discontinued at the end of the month after ten (10) years of retirement. If the employee becomes eligible for Medicare during the ten year benefit period, the Employer will contribute toward the cost of a Medicare supplement plan of the Employee's choice, up to the amount of the Employer contribution towards the health insurance premium, in-lieu of the group health coverage.

ISSUE TWELVE: POST EMPLOYMENT HEALTH CARE SAVINGS - POST EMPLOYMENT HEALTH CARE SAVINGS 2010 - ARTICLE 24

ISSUE THIRTEEN: POST EMPLOYMENT HEALTH CARE SAVINGS - POST EMPLOYMENT HEALTH CARE SAVINGS 2011 - ARTICLE 24

ISSUE FOURTEEN: POST EMPLOYMENT HEALTH CARE SAVINGS - POST EMPLOYMENT HEALTH CARE SAVINGS 2012 - ARTICLE 24

POSITION OF THE PARTIES

If the Arbitrator awards the City's position to sunset the retiree health insurance language (Article 23.4) in Issue 11, the City proposes a $0 contribution by the City to the Employer sponsored Post Employment Health Care Savings Plan for 2010, a $5

per month contribution by the City for 2011, and a $10 per month contribution by the City for 2012.

If the Arbitrator awards the Union's position of no change to the contract language in Article 23.4, the City proposes a $0 contribution by the City to the Employer sponsored Post Employment Health Care Savings Plan for 2010, a $0 per month contribution by the City for 2011, and a $0 increase per month for 2012.

The Union proposes a $0 contribution by the City to the Employer sponsored Post Employment Health Care Savings Plan for 2010, a $0 per month contribution by the City for 2011, and a $0 per month contribution by the City for 2012.

ISSUE FIFTEEN: SEVERANCE - SEVERANCE PAYOUT - ARTICLE 11

POSITION OF THE PARTIES

If the Arbitrator awards the City's position to sunset the retiree health insurance language (Article 23.4) in Issue 11, the City proposes to increase the severance pay out to 60% of an employee's unused sick leave to the maximum hours already stated in the collective bargaining agreement (Article 11.2) for 2010, 2011, and 2012.

If the Arbitrator awards the Union's position of no change to the contract language in Article 23.4, the City proposes no change in the current contract language in Article 11.2 which now

has a severance pay out of 50% of an employee's unused sick leave to the maximum hours already stated in the contract.

The Union modified their position at the hearing and now proposes to increase the severance pay out to 60% of an employee's unused sick leave to the maximum hours already stated in the collective bargaining agreement (Article 11.2) for 2010, 2011, and 2012.

AWARD

The City's position is sustained on all the issues.

RATIONALE

It is generally recognized that in making decisions interest arbitrators consider four factors: (1) employer's ability to pay; (2) internal equity; (3) external (market) comparisons; and (4) other considerations such as CPI, attraction and retention of employees, etc.

This case is unique in many ways. For example, by the Arbitrator sustaining the City's position on all of the issues, Bargaining Unit members received, on the whole, more increases than if the Arbitrator ruled in favor of the Union's position. Simply, the City offered more money than what the Union is willing to accept -- a novel twist in interest arbitration.

This case is also unique in that the City offered alternative positions on each and every issue based upon how the

Arbitrator ruled on Issue 11, retiree health insurance language. Consequently, the Parties agree that this is the most important issue before the Arbitrator, and the one which resulted in this interest arbitration case. Thus, this issue will be addressed first by the Arbitrator.

If the Arbitrator sustained the City's position on this issue, the Employer was willing to grant economic increases in wages, health and dental insurance, Post Employment Health Care Savings, and severance pay out of an employee's unused sick leave. In the alternative, the City's position if the Arbitrator ruled in favor of the Union on this issue is status quo, meaning no additional City contributions to health and dental insurance, wages, and severance, and no contributions whatsoever to the Post Employment Health Care Savings Plan.

The retiree health insurance contract language contained in Article 23.4, Health and Dental Insurance, provides that after thirty years of employment with the City an employee who retires may continue in the City's health insurance plan with the same City coverage towards premium as eligible active employees. The Employer health insurance contribution for a retired City employee ends at the end of the month after ten years of retirement. Finally, if the retired City employee becomes eligible for Medicare during the ten year benefit period, the

Employer will contribute toward the cost of a Medicare supplement plan of the employee's choosing, up to the amount of the Employer contribution toward the health insurance premium, in lieu of the group health insurance coverage.

This language was negotiated by the Parties in 2002. There was no evidence with regards to bargaining history as to why and under what circumstances the Parties agreed to place this language in the contract. In any event, the Employer's position in this case is to sunset the existing contract language in Article 23.4 effective January 1, 2010. In other words, the City is proposing to add language to Article 23.4 indicating the retiree health insurance benefit is applicable to employees hired prior to January 1, 2010, and therefore, would not apply to any future employees. Thus, none of the current 20 Bargaining Unit members would be affected by the Employer's position since the Employer did not hire any new Police Officers in 2010.

The Arbitrator recognizes that altering existing contract language, like the addition of new contract language, requires the party proposing a change to bear the burden of proof to prove that their proposal is necessary and reasonable.

There are many legitimate reasons offered by the City for the sunsetting of the retiree health insurance. One is future cost. Although the most senior Police Officer in the Bargaining

Unit was hired February 10, 1994, meaning that he will not eligible for the retiree insurance benefit until 2024, there are currently ten former City employees receiving this retiree health insurance benefit, and of those ten employees, eight are formerly with the Police Department. Clearly, the Police Department has made substantial use of this benefit which is why it is important from the City's perspective to be pro-active in lessening these rising costs in our difficult economic times by having this benefit sunsetted for future Police Officers.

City Finance Director Ellen Paulseth explained, when discussing Employer Exhibit #52, Note 14 from the City's Annual Comprehensive Financial Report, that there are actually two costs associated with the retiree health insurance benefit. There is the actual cost of contributions by the City and the implicit rate subsidy. The implicit rate subsidy is mentioned because retirees are allowed to stay on the City's group insurance at the same rate of premium as regular employees. The plan actually "subsidizes" the retirees because they should be paying a higher rate due to age risk. The costs associated with the retiree health insurance and the actuarial value of benefits is presently over $2.7 million dollars. (Employer Exhibits #53, 54). This value will likely increase as health insurance costs themselves increase.

A second substantial reason for sunsetting the retiree health insurance is that an appropriate quid pro quo is not necessary. The City's proposal does not remove this benefit from any of the current employees and, thus, is not a take-away from the Union. The current Bargaining Unit members are losing nothing.

Even assuming arguendo that a quid pro quo is necessary, the Union is willing to accept all of the economic increases offered by the City, except for the Employer contribution to Post Employment Health Care Savings Plan in 2011 and 2012. The City proposes a $5 per month contribution to the Employer sponsored Post Employment Care Savings Plan for 2011 and a $10 per month Employer contribution for 2012. The Union is not willing to accept the Employer contribution to the Post Employment Health Care Savings Plan because they believe, by doing so, would constitute an unacceptable quid pro quo for eliminating retiree health insurance for future employees.

The City employs a total of 59 employees, 58 of which are represented by unions, those being AFSCME Local No. 517, IUOE Local No. 49, LELS which represents the Sergeants in a separate bargaining unit and Police Officers in this Bargaining Unit, and MAPE. The Union's position fails to recognize that all of the other unions in the City agreed to wage increases, contributions

to health and dental insurance premiums, Employer contribution to Post Employment Health Care Savings Plan, and increased severance payout in exchange for the sunsetting of the retiree health insurance language. Clearly, an appropriate quid pro quo was reached by the City with those other City employees which should also be recognized and accepted by this Bargaining Unit. By the Union rejecting the economic increases for Post Employment Health Care Savings Plan for the sake of preserving the status quo in the retiree health insurance misses the point and is costly to Bargaining Unit members. The Union is actually leaving money on the table which can be used by Bargaining Unit members. The Arbitrator rectified that situation by awarding the City's position in this regard.

The City's position as to Employer contribution to Post Employment Health Care Savings Plan is also supported by both internal and external equity. All other unions in the City will be receiving the same amount of payment being made by the Employer in Post Employment Health Care Savings Plan ($5 per month in 2011 and $10 per month in 2012). In addition, only one Stanton 6 city addresses the Post Employment Health Care Savings Plan in their contract. Thus, this benefit is not being enjoyed by the majority of the other comparable cities, unlike the situation with Police Officers in this City.

The retiree health insurance issue is not new to interest arbitration. Arbitrator Francis Kapsch, Jr. examined this issue recently in County of Anoka and Law Enforcement Labor Services, Inc., Local No. 222, BMS Case No. 07-PN-0910 (January, 2008). He found in his award that while there was a tremendous cost to retiree health insurance (the County cited a liability exceeding $100 million) and despite the fact that all other employees in the County had their retiree insurance sunset, he could not bring himself to sustain the County's position to sunset this benefit. Arbitrator Kapsch stated:

> The County has historically known or reasonably should have known about its potential liability for the retiree health program. To argue otherwise would indicate a total lack of fiscal or financial responsibility by the County. I also note that Rule 45 does not require that contributions be made, only that, if made, they must be shown on the financial statement. Therefore, I have to believe that the incentive behind the County's efforts to cut off newly hired employees from the retiree health insurance program, as of 1/6/07, is to soften the impact of now having to show the cold, hard financial figures for the insurance program to the citizens and voters. I see nothing here that portends an imminent financial crisis for the County, only a public relations crisis.
>
> Contrary to the County's argument, I find that the County's proposed language change is a material change in the insurance program. It is the type of change that Arbitrator Imes appears to have contemplated when she placed the retiree health language into the contract, rather than leaving it as a "me too" addendum. Her action made changes a negotiable item. Arbitrator Bognanno subsequently affirmed Imes in 1999. I also note that the County did successfully negotiate this issue with Operating Engineers, Local No. 49.

> I find that the County has not met its burden of proof to show that this language change is immediately necessary or that the County would suffer any immediate or short-term significant financial damage if its Proposal were not awarded. The list of perspective and potential adverse future financial problems postulated by the County are unsupported by any detailed facts or data and can only be categorized as speculation.

Arbitrator Kapsch went on to award the County pattern for other issues and denied any issues that created new language in the contract including Health Care Savings Plan contribution. Id.

The decision by Arbitrator Kapsch in Anoka County is distinguishable from the present case in many ways. First, in Anoka County the retiree health insurance language was originally placed in the collective bargaining agreement as part of an interest arbitration decision by Arbitrator Sharon Imes. Historically, arbitrators follow awards made by other arbitrators unless there are justifiable reasons to rule otherwise. Second, Arbitrator Kapsch found in Anoka County, the reason the County wanted to eliminate the benefit for newly hired employees, was to soften the impact of having to report the hard financial figures to the citizens. That is not the case in Forest Lake. The City has reported this information as part of its comprehensive annual financial report for years. The City is not attempting to make its finances look better on paper for the sake of the public.

The City is literally trying to get its future liabilities under control, so it can continue to provide excellent services to the citizens of Forest Lake, and jobs to its employees. Third, Arbitrator Kapsch was dealing with a county, not a city. Arbitrator normally do not compare cities with counties due to their apparent differences such as their structure, financing of operations, and sources of finances, regardless of the job similarities. Fourth, Anoka County has a much larger tax base and has other types of revenue not available to the City to address this future liability. Lastly, Arbitrator Kapsch's decision was issued in January 2008 before the recession impacted the state and nation. Since that time, cities have had to take a much harder look at their budgets, finances, and services due to the lack of or diminished state aids.

Finally, the Union argues that it assumed the retiree health insurance language was negotiated into the contract in 2002 as a retention tool for employees, specifically to keep them from going to Minneapolis and St. Paul Police Departments. The Union, however, provided no past bargaining history to support that allegation. In fact, there was no evidence presented by the Union that any of their members stayed at Forest Lake because of the retiree health insurance benefit. Moreover, there was no evidence that the City has an attraction or retention problem

among Police Officers. The City's proposal to sunset the retiree health insurance language is part of an effort to retain a benefit these employees believed they would be receiving when they began working for Forest Lake. The current employees will be receiving this benefit under the City's proposal. The unknown, future employees of Forest Lake have no such expectations to this benefit.

External comparisons are very important considerations in any interest arbitration case. The Parties agree that Forest Lake should be compared for external market comparisons with other Stanton Group 6 cities. There are 28 Stanton Group 6 cities, including Forest Lake.

The evidence shows that out of Stanton Group 6 cities, only Champlin and Forest Lake address retiree health insurance benefits in their collective bargaining agreements. Other Stanton Group 6 cities which previously had the language as part of their collective bargaining agreements, have since sunsetted the language. This is a rare benefit for employees to receive.

The City has met its burden on their proposed sunsetting of the retiree health insurance language. Their position is reasonable and supported by internal and external comparables and other previously stated considerations.

As to the other issues, it is clear that the Employer's position should be sustained as it provides the maximum wage and benefit package to Bargaining Unit members. A three year duration (2010, 2011, and 2012) is appropriate because other unions in the City all agreed to this length of contracts in negotiations, in exchange for sunsetting the retiree health insurance language. The City also agrees to a three year contract since the Arbitrator awarded the sunsetting of the retiree health insurance benefit. In addition, the Union agrees to a three year contract. Therefore, in order to maintain labor harmony in this Bargaining Unit and others in the City, the duration should be three years.

The Parties are in agreement with the wage increases for each year (2010 - 0%, 2011 - 1.5%, 2012 - 3%) since the sunsetting of the retiree health insurance benefit was awarded by the Arbitrator. There is no evidence that the Employer is unable to pay for any of the economic awards, including wage increases, rendered by the Arbitrator since they proposed them in the first place.

The City will pay the employees the same wage increases received by all other unions in the City in exchange for sunsetting the retiree health insurance benefit language in Article 23.4.

The City compares very favorably to the wages being paid other police officers in Stanton Group 6 cities, and also with regard to the percentage increases granted to the Bargaining Unit members. Of significance important is that the City is willing to increase wages by 3% for 2012, when none of the Stanton Group 6 cities have settled for 2012. Whether this wage percentage increase for 2012 becomes the benchmark for other Stanton 6 cities is unknown at this time, but unless the financial condition of the City improves, the 3% wage increase, along with the other economic improvements offered by the City and accepted by the Arbitrator, may become the quid pro quo for sunsetting the retiree insurance benefit for future employees.

For the last two years City employees, including the Police Officers, have netted 3.2% more in wages than the CPI. This difference more than offsets a 0% wage increase for 2010.

The Parties are in agreement with the Employer's dental insurance contribution for each month (2010 - $155, 2011 - $160, 2012 - $165) since the sunsetting of the retiree health insurance language was awarded by the Arbitrator. Again, internal consistency was prevalent as all the other unions in the City accepted the City's proposed contribution to dental insurance premiums in exchange for the sunsetting of the retiree health insurance language which was awarded by the Arbitrator. In

addition, the City has one of the highest Employer contributions to dental insurance in comparison with other Stanton Group 6 cities.

The City proposed to change the severance payout from 50% to 60%, leaving in place the years of service requirements and the maximum amount of sick leave hours which can be used toward severance, if the retiree health insurance language is sunsetted. The Union revised this position at the arbitration hearing to conform with that of the Employer. With the Union's revised final position, the Parties are proposing the same change, with the City's proposal contingent on the sunsetting of the retiree health insurance language which was awarded by the Arbitrator.

Once again, all unions in the City agreed to the Employer's position in this regard. The City's proposal is reasonable and supported by internal comparables.

The Parties are to be complimented on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written hearing briefs.

Richard John Miller

Dated January 21, 2011, at Maple Grove, Minnesota.