

(PELRA),¹ Bureau of Mediation Services (BMS) Commissioner Steven G. Hoffmeyer certified the following issues in dispute to interest arbitration in a letter dated October 19, 2010.

- 1. Duration — Length of Agreement — Article XXVIII**
- 2. Police Wages 2010 — Amount of Increase — Appendix A**
- 3. Police Wages 2011 — Amount of Increase (If Awarded) — Appendix A 1**
- 4. Short Term Disability — Eligibility Formula — Article XXIV**

The undersigned Arbitrator, being duly appointed as an arbitrator under the auspices of the BMS, was notified of my selection as the neutral arbitrator in this matter by letter dated December 2, 2010 from BMS Commissioner Steven G. Hoffmeyer. A hearing was held on January 25, 2011 in Cottage Grove, Minnesota. The parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced and received into the record. During the course of the hearing, the parties stipulated that the aforementioned Commissioner-certified issues were properly before the undersigned Arbitrator for final determination. The record was closed on January 25, 2011 and the matter was taken under advisement when both parties waived the filing of post-hearing briefs.

BACKGROUND AND FACTS

The City of Cottage Grove, hereinafter the City, with an estimated population of 34,000 residents is located in the east central Minnesota County of Washington approximately eight miles southeast of the City of St. Paul. The City has approximately

¹ Minn. Stat. Sec. 179A.16, Subd. 2.

127 employees, of which 76 are currently represented in five bargaining units serviced by separate labor organizations. (City Book, pgs. 8-9)

The Public Safety Service Department supervised by Public Service Director Craig A. Woolery consists of 39 sworn Police Officers, 5 Community Service Officers and 15 Reserve Officers. The City of Cottage Grove Police Officer Federation, hereinafter the Federation, is the recognized collective bargaining representative for 30 of the Department's sworn police officers in the classifications of Police Officer, Police Officer/Paramedic and Police Officer/Investigator. The last Agreement was effective from January 1, 2008 through December 31, 2009.² The parties are currently operating under the provisions of said expired Agreement pursuant to Minn. Stat. Sec. 179A, Subd.4.

The City and the Federation have a brief history of collective bargaining. Prior to 2008, Labor Employment Labor Services and its predecessor Minnesota Teamsters and Public and Law Enforcement Employees' Union Local No. 320 represented this unit. The other represented groups, their representative, the number of unit employees and the current contract periods are as follows:

Public Works Department — International Union of Operating Engineers Local 49 — 31 employees — January 1, 2009 through December 31, 2010.

Police Officer Sergeants — Law Enforcement Labor Services Local 138 — 6 employees — January 1, 2009 through December 31, 2010.

Clerical Employees — American Federation of State, County and Municipal Employees Local 517 — 10 employees — January 1, 2010 through December 31, 2011.

Firefighters — International Association of Fire Fighters — 2 employees — January 1, 2008 through December 31, 2009.

² Hereinafter the group will be titled Officer.

OPINION AND AWARD

On the basis of the evaluation of all of the testimony, documents and arguments presented by the parties, the decision by this Arbitrator is as follows

ISSUE 1. — DURATION - LENGTH OF AGREEMENT – ARTICLE XVIII

Prior to going on the record the Federation agreed to the City's proposal and the parties stipulated that the new Agreement be two years in duration. In view of the foregoing, the language in Article XVIII Section 1 in the new Agreement will state, "This Agreement shall be effective as of the 1st day of January 1, 2010, and shall remain in full force and effect until the 31st day of December 2011".

ISSUE 2 — POLICE WAGES 2010 — AMOUNT OF INCREASE — APPENDIX A

AND

ISSUE 3 — POLICE WAGES 2011 — AMOUNT OF INCREASE (IF AWARDED) — APPENDIX A

The existing pay plan contains a three year (36 month) to top system. The 2009 base pay for an Officer ranges from a start rate of \$22.97 to a thirty-six month top patrol rate of \$30.25. In addition, there is a seven percent (7%) certified Paramedic premium and a five percent (5%) Investigator premium above the Officers regular wage rate. The pay breakdown of the 30 individuals within the bargaining unit discloses that as of December 31, 2010, five of the Officers are below the 36 month top step — one at the start rate, two at 12 months, one at 18 months and one at 24 months.

Six of the Officers are at the 36 month top patrol wage rate. Sixteen of the Officers are at the top step and receive the Police Officer/Paramedic 7% premium. Three Officers are at the top step and also receive the Investigator 5% premium. Therefore, 25 of the 30 Officers are at the top patrol rate or higher. In addition, there are longevity pay

increases of 3% after four years (9 Officers), 5% after seven years (2 Officers), 7% after 10 years (3 Officers) and 9% after 13 years (6 Officers).³ Thus, 20 Officers or 2/3 of the bargaining unit receive longevity in addition to top patrol pay. Twelve of the 20 Officers also receive the 7% paramedic premium and three Officers receive the 5% Investigator premium.

City Proposal

2010: On December 31, 2010 the members of the Cottage Grove Police Officers Federation, Inc. will receive the same annual cost of living adjustment (COLA) that the City of Cottage Grove Local 49 bargaining unit receives, not to be less than 2% (See 2009-2010 Local 49 labor contract, page 15). Both parties recognize that the members of Local No. 138 gave up a COLA increase at the beginning of 2010 to assist the City with its 2010 budget challenges.

2011: On January 1, 2011 the members of the Cottage Grove Police Officers Federation, Inc. will receive a 1% cost of living adjustment (COLA). This percentage will be applied to all base wage rates. This 1% will be on top of the percentage increase they will receive on December 31, 2010.

On July 1, 2011 the City will conduct a market comparison for all public works maintenance bargaining units, clerical bargaining units, and police patrol bargaining units of cities with populations between 20,000 and 60,000 that have wage amounts established as of June 1, 2011. The City will determine the average cost of living adjustments (COLA) of all three (3) combined bargaining unit groups by the recorded general increase in the settled contracts. If the City's bargaining units are below the average COLA of the three (3) combined bargaining groups the City will apply that percentage to the base wage rates of the police officer bargaining unit, less the 1% received on January 1, 2011. The cities used in comparison are cities that the Met Council estimates are between 20,000 and 60,000 in population in 2007. Specifically, the cities are: Andover, Blaine, Fridley, Ramsey, Chanhassen, Chaska, Apple Valley, Hastings, Inver Grove Heights, Lakeville, Rosemount, South St. Paul, Brooklyn Center, Champlin, Crystal, Edina, Golden Valley, Maple Grove, Minnetonka, New Hope, Richfield, Shoreview, St. Louis Park, Maplewood, New Brighton, Roseville, White Bear Lake, Prior Lake, Savage, Shakopee, Oakdale and Woodbury. The cities used in comparisons will be those from the above list that have a settled 2011 contract prior to June 1, 2011.

³ Using 1/01/10 as the operative date.

Federation Proposal

2010: A \$1.00 per hour increase only for top patrol effective January 1, 2010. (During the course of the hearing the Federation stated that it would accept the \$1.00 increase effective July 1, 2010 rather than January 1, 2010.)

2011: A 2% increase effective January 1, 2011.

CITY POSITION

Ability to Pay

The City is not arguing that it does not have the ability to pay what the Federation is proposing; however, the Arbitrator should consider whether in doing so it can meet its statutory obligation to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these obligations. The current economic picture paints a gloomy picture worldwide. Nationally, the federal deficit is growing and the federal government is facing severe budgetary constraints with shortfalls exceeding trillions of dollars. Unemployment is hovering around 9.5%. We are coming out of a steep recession and the growth in the Gross Domestic Product (GDP) is at a rate that does not support positive sustained growth. This struggling economy resulted in no pay increases for both federal employees and Social Security recipients.

The State of Minnesota is also facing serious shortfalls with a projected \$6.2 billion budget shortfall in 2011. Un-allotments of \$2.1 billion, including un-allotments to Local Government Aid (LGA) and Market Value Homestead Credit (MVHC), were passed in the final budget for 2010. The huge State budget deficits will continue to impact cities like Cottage Grove. Cities by law must balance their budgets. Under the current

economic environment, the cities are going to have less money to operate. The result inevitably is going to be a combination of service cuts and property tax increases.

In the five years prior to 2008, the City enjoyed robust growth with an average of over 221 new housing units being added to the City each year. In the three years since, no more than 84 permits for new housing have been issued each year. The reduction in building construction revenue has been compounded by the impact on the State budget. This includes a lack of LGA payments since 2003 and none are expected in 2011. Like other cities, the City did not receive its HVHC funding for the second half of 2008. The City was scheduled to receive \$493,051 in 2009 and \$588,324 in 2010; but only received \$181,303 and \$4,768, respectively, in 2009 and 2010.

The market value of the land within the City has also had a negative impact in that it declined by 4.38% in 2009 and an additional 7.71% in 2010. The City's tax capacity for taxes payable in 2010 decreased by 5.64% and by an additional 7.15% for taxes payable in 2011. These declines in value have returned the total market value of properties in the City to below valuation year 2006 levels. These reduced values put significant pressure on the City to increase property tax rates in order to just maintain current spending levels. Data shows that the City's taxable tax capacity from 2006 to 2011 is up 3.639%. In contrast, the wages for the members of this bargaining unit has increased by 12% for this same period.

Internal Equity

The City argues that a comparison shows that its proposals are internally consistent. The City's most recent (1/07/10) Pay Equity Implementation Report discloses that the

male-dominated classifications of Police Officer and Police Officer/Investigator were \$397.15 above and \$298.80 below, respectively, of the predicted pay level used for pay equity purposes. The balanced classification of Police Officer/Paramedic was \$309.98 above the predicted pay level. The City argues that an arbitrator's statutory duty to consider the equitable compensation relationship standards does not extend to moving a male-dominated classification and a balanced classification farther ahead of predicted pay than they currently enjoy even if the additional result is to bring a male-dominated classification closer to the predicted amount. Thus, pay equity does not provide any basis to move away from the internal wage pattern established for 2010 and the market-based adjustment proposed for 2011.

The long standing bargaining history in the City is to negotiate or arbitrate the same general wage increase for all employees. From 2005 through 2009 all five bargaining unit members and non-union employees received the same general wage increase.⁴ In 2010 the three active bargaining units, which represent 60% of the City's represented employees, reached an agreement on a 2% wage increase effective December 31, 2010.⁵ This same wage adjustment was given to the unrepresented employees. Thus, 76% of the City's work force received the same general wage increase. On January 1, 2011 the City imposed the same January wage increase and July catch up on unrepresented employees that it was proposing to the Officers. The Clerical unit

⁴ For all intents and purposes the Firefighters unit is considered inactive for negotiation purposes and must accept the pattern increases negotiated with the other bargaining units. (Since it only has two members the IAFF has notified the City that it will no longer bargain for this group.)

⁵ The Public Works unit had its 2% wage adjustment effective on January 1, 2010 rather than December 31, 2010; however, they concurrently accepted a 41-day furlough which then resulted in an effective wage adjustment for 2010 of 0%.

employees received the same wage adjustment as a result of the negotiated 2010-2011 contract. This wage package has also been offered to the other bargaining units.

External Market Considerations

The City argues that the Union's attempt to create an external market should be rejected. There simply are not sufficient external comparables for the Officer unit. There are problems identifying an appropriate external market. Previously DCA Stanton was referenced as a source for this analysis. This survey is no longer published. When it was operative, there were problems because the City was grouped with some very large cities such as Bloomington, Brooklyn Park and Plymouth in Group 5 and ignored cities with populations closer to the City such as Savage and White Bear Lake in Group 6. Arbitrators recognized that a more appropriate external market was a blended group of former Group 5 and Group 6 cities in four interest arbitration awards issued in 2000, 2004 and 2006.

A further complicating factor in performing an external market analysis is that the City utilizes a relatively short (36 month to top) wage system rather than a more traditional five-year (60 months) system. As arbitrator Miller noted in his 2004 arbitration award, this "unique pay system" is "heavily front loaded".⁶ In addition, the City has a longevity system that begins after four years of continuous service and reaches top longevity after 13 years of continuous service. Thus, the comparison of top base pay among the cities becomes a more complex calculation for the City because an officer in their fifth year of service in other cities is just reaching top, whereas the City's Officer has been at top pay

⁶ Cottage Grove and LELS, BMS Case No. 04-PN-750 (Sept. 2, 2004, Miller) at page 10.

for two years and is already receiving an additional longevity payment. In addition, 15 of the 30 Officers in the unit are Paramedics and receive a 7% premium. By contrast, only 26% of the officers in the external comparable market receive an extra stipend and only two cities (Woodbury and Maplewood) utilize police officer/paramedics.

Rather, the City argues that the best approach to take in a situation where there is a unique pay plan in terms of years of movement through the various levels of pay is to perform an economic “snapshot” of how an individual officer fares over time within the pay system. This approach was utilized by arbitrator Jacobs in the 2010 Hennepin County deputy sheriff case in comparing the two different wage systems utilized by Hennepin and Ramsey Counties. In this decision Jacobs noted that, *“It was apparent that there is a somewhat different philosophy between the two jurisdictions and that Hennepin County “front loads” its wage structure and that it does take until about year 16 for the two wage scales. Over time however, the wage structures are not radically different and the evidence showed that the two sets of lifetime earnings are not terribly different. On his record they were not so different to compel the wage increase the Union is seeking”*; adding that *“The more persuasive evidence was that the wage comparisons are almost the same even if one extends the payments out over the course of 25 years.”*⁷

In the present case, the “earnings history” comparison for the Officers and the police officers in the external comparable cities using 2010 hourly rates (including the City’s final position), disclose that the Officers are compensated at 98.29% of the comparable market over the 25 year period of 2010 through 2035. (City Attachment 16) The Patrol

⁷ Hennepin County and Hennepin County Deputy Sheriff’s Association, BMS Case No. 10-PN-0776 (Sept. 7, 2010 Jacobs) at page 8

Officer/Paramedic is compensated at 104.88% of this comparable market for this same period of time. As a “blended” rate, the Officers are compensated at 101.58% of the external market using this measurement. (City Attachment 17) This Attachment discloses that the Officers rank 25th of the 38 listed cities using the 25-year compensation analysis.

The City further argues that a lack of turnover supports its position and may be the best external market indicator. Only three Officers have left the force in the past 10 years for police officer positions in other cities and none for pay reasons. Additionally, in April 2010 there were 221 applicants for one open Officer position.

Finally, the City argues that its 2011 proposal addresses external market inequities. By tying wage increases above 1% to increases in the external markets, the City is maintaining internal equity with external considerations.

Other Economic Considerations

The City’s position is that other economic considerations do not favor the Federation’s position. From 2005 through 2009 the Consumer Price Index for all urban cities increased (CPI-U) by 12.8% while the Officers received general increases of 15%. Three per cent of this increase occurred in 2009 while in 2010, the rate fell and hovered around 1.1% after starting the year at 2.1%. The City’s position is even more generous in light of the commonly accepted economic principle which assumes that 80% of the CPI index change is an approximation of the real change in purchasing power for a public employee particularly where there is a separate contribution toward the highly inflationary cost of health insurance, such as is in place in the City. A more realistic

approach would be to use Social Security benefit increases which were at 0% for 2010 and 2011.

FEDERATION POSITION

Ability to Pay

The Federation contends that the City is financially healthy and can easily afford the costs associated with its proposals. The Federation argues that the City's audited financial statements are convincing evidence that the City has the ability to pay the cost of the Federation's requested wage increases. According to page 21 of the City's Comprehensive Annual Financial Report dated December 31, 2009, the City has increased its combined ending funds balance \$5,882,036 to the level of \$41,742,521. (Federation Exhibit 6) Of this approximately 81% or \$34,054,253 is "unreserved fund balance" available for spending at the City's discretion. Further, net assets are an indicator of the financial health of a city. According to page 28 of the Financial Report, the City reported, as it did in the prior fiscal year, positive balance increases in all three net asset categories to the tune of \$4,300,828.

Recently the City saved one million dollars by swapping land for its new Public Safety Building. The City also saved money in recent times. It saved money by not funding the College Incentive Program (tuition reimbursement) for several years. It also saved \$63,000 in 2009-2010 by not paying wages as a result of a bargaining unit

member being deployed. Further, the Public Safety Department has lost 17 officers since 2005, resulting in savings from delayed hiring of replacements.⁸

Even though there has not been any LGA since 2003 and no recent MVHC, nor is any expected in the near future, the City has fared much better. In fact the City continues to grow, prosper financially and increase its reserves despite the current economic situation and concurrent decreases in State and Federal funding.

Internal Equity

It is the Federation's position that internal equity considerations do not support the City's proposals. The Federation argues that the external market place should govern any award.

There is a considerable difference in the job duties, responsibilities, employee safety and benefits compared to other City employees. Clericals and night Sergeants are mandated to work week ends and holidays as a part of a regular schedule. They have the luxury of time off (vacations, sick, emergency leave, etc.) whereas unit members are bound by minimum staffing requirements. Officers are required to come in on days off for court, training, short staffing and special details. Commonly, other bargaining unit employees are not exposed to outside safety concerns due to job-related duties.

The City has a past history of negotiating with weaker bargaining units first and imposing those settlements on the Federation unit leaving no room for negotiations. Prior to the current negotiations, the City promised the Federation that it would be the

⁸ The circumstances surrounding the officers leaving and whether or not they were bargaining unit members is not known.

first bargaining unit to the table in 2010. Contrary to this promise, the City negotiated with the Clerical unit first.

In 2009 the Sergeant's unit received a windfall when they agreed to end their Paramedic 7% differential that three Sergeants were receiving and divide the savings among all six Sergeants in the unit. Thus, each Sergeant received an additional 3½% increase for that year.

The City argues that there is an internal pattern established based upon the 2% imposed on unrepresented employees and the 2% negotiated with the Public Works, Clerical and Sergeants unit in 2010. With the exception of the Sergeants, all of these employees are non-essential. An award based solely on settlements between the City and non-essential employees fails to recognize the unique duties and conditions of essential employees. These unique duties and conditions are most accurately reflected in the external market place.

The 2011 wages have only been established for the Clerical unit, a unit that has very little bargaining power and is likely to accede to the City's demands. Their wage levels for 2011 were negotiated in the two year contract effective January 1, 2010 through December 31, 2011. While the City has offered the same 2011 increases to the Public Works and Sergeants units, no internal pattern has been established yet.

External Market Considerations

The Federation's position is that its wage proposals for 2010 and 2011 should be awarded because it is supported by external market comparisons. This standard should be given more weight than internal comparables since it is comparing wage increases

and wage level rankings of police officers in comparably-sized cities in the Metro area. In other words, it is comparing “apples to apples” and not “apples to oranges” as the City is attempting to do. Further data discloses that the Officers rank next to last in the 30-city police officer group that the Federation avers is comparable.⁹ The current starting wage, excluding the additional 7% that Police Officer/Paramedic and the 5% that Police Officer/Investigator receive, is \$22.97 while the average starting wage of a police officer in its comparable group is \$22.54.¹⁰ The current top wage, excluding the additional 7% that Police Officer/Paramedic and Police Officer/Investigator receive, is \$30.25 while the average top wage of police officer in its comparable group is \$31.63.

The Federation is only seeking the \$1.00 per hour increase for its Officers that are at the top patrol level. The reason it is seeking this increase only for the top patrol Officers is that the Officer starting wage rate is comparable with the starting wage level for officers in other comparable cities while the wage level for top patrol Officers lags significantly with police officers in comparable Metro cities. Higher starting level wage adjustments and historical across-the-board wage increases for all Officers has had the effect of compressing the City’s wage structure for its Officers.

The City attempts to use a “blended” wage including Police Officer and Police Officer/Paramedic classifications. They are using the 7% Paramedic pay to offset the

⁹ Police officers in Shakopee would rank next to last without the 2% performance pay that they receive for civic volunteering. According to the Federation, virtually all of the police officers receive this performance pay, which increases its ranking to 7th from the bottom.

¹⁰ Federation Exhibit 3 (Book) p.9. These cities include Blaine, Fridley, Ramsey, Chaska, Apple Valley, Hastings, Cottage Grove, Lakeville, Rosemount, South St. Paul, Brooklyn Center, Champlin, Crystal, Edina, Golden Valley, Maple Grove, Minnetonka, New Hope, Richfield, Shoreview, St. Louis Park, Maplewood, New Brighton, Roseville, White Bear Lake, Prior Lake, Savage, Shakopee, Oakdale and Woodbury.

real shortfall that is evident in the top patrol Officer wages. The 7% premium pay is more than completely funded with 11.66% of the Police Officer/Paramedic wages being charged to Emergency Medical Services (EMS) budget which revenues monies for its services.¹¹

The Federation's proposal in 2010 would incur increases for 23 Officers if retroactive to January 1, 2010 and 25 Officers if the increase was postponed until July 1, 2010. The cost of the Federation's 2010 wage proposal would be \$47,840 for a full year and \$29,920 for six months.¹² The cost of the requested 2% wage increase for all 30 Officers in 2011 would be \$37,633. Thus, the total costs for any wage increase in both years would be \$85,473 if the proposed wage increase was retroactive to January 1, 2010 and \$61,553 if implementation was delayed until July 1, 2010.¹³

The City proposed a 2% increase for 2010 with an effective date of December 31, 2010. This effectively is a 0% wage increase for 2010. The City proposed a 1% increase effective January 1, 2011, which in essence amounts to a total 3% wage increase over the 2009 wage structure for the 2010 - 2011 contract term. The Officers could get an additional increase based upon comparable wage increases in excess of 1% granted in certain bargaining units in what it deems are comparable cities.¹⁴

Without considering any July 1, 2011 adjustment, the total costs of the City's wage proposal for the two-year period would be \$55,381, all of which would inure in 2011.

¹¹ Id. p. 17.

¹² Id. pgs.9-10.

¹³ Id. p.11.

¹⁴ The City's comparable cities are the same as the Federation with the exception that the City would add Andover (31,008) and Chanhassen (28,335).

Thus, there would only be a difference of \$6,172 between the two proposals if the Federation's 2010 wage proposal is implemented on July 1, 2010.¹⁵ Clearly, the City can afford the Federation's wage proposals for 2010 and 2011.

Other Economic Considerations

The Federation did not make an "other economic consideration" argument except to highlight the fact that five Officers have left the City for other positions in recent times.

DISCUSSION AND AWARD

In formulating this award, I intend to look at the traditional criteria that arbitrators use in determining wage rates in interest arbitration matters—ability to pay, pay equity, internal comparisons, external comparisons and other economic considerations.

When it is all said and done, my role as an arbitrator is to ensure that any award does not conflict with City's compliance with the Pay Equity Act as measured by DOER. The City was in compliance in 2010 and will remain in compliance even if the Federation's wage proposal is awarded. Pay equity as stipulated by the parties is therefore not in issue in this matter. If pay equity were in issue, I would not hesitate to give overwhelming weight to internal considerations.

The City agrees that it can afford the Federation's wage proposal; however, while the City is not making ability to pay argument, it states, *"its proposal to provide a market-driven-formula-based increase should be recognized as a significant development given these difficult economic times."*

¹⁵ Id. pgs. 12-13.

Therefore, since equity pay and ability to pay are not in issue,¹⁶ I intend to ensure that any award not compromise the internal relationship of employees, and at the same time ensure that the Officers are not left behind by the "marketplace". I will also consider the other economic considerations raised by the parties, if such considerations are relevant in my Award.

As stated earlier herein, the City has approximately 127 employees, of which 76 are represented by four bargaining units serviced by four different unions.¹⁷ There are 30 Officers, which is roughly 40% of the unionized work force and approximately 24% of the City's total employee compliment. The evidence disclosed that there is a consistent internal pattern that has emerged in establishing wage increases wherein all employees have received the same general wage increase percentages since at least 2005.¹⁸ The City has currently negotiated a general 2% wage increase effective December 31, 2010 for three bargaining units that comprise 60% of the unionized work force for 2010. The City also set this same general 2% wage increase for all its unrepresented employees for 2010. Absent compelling reasons, it would be difficult to award greater wage increase percentages through interest arbitration than what has been established in negotiated settlements or given to unrepresented employees.

It is understandable for obvious reasons why the City or any employer would want uniform percentage wage increases for all of its employee groups. With different wage increases for different groups the collective bargaining process could be disruptive of

¹⁶ The City's ability to pay argument has little if any impact on my subsequent awards.

¹⁷ The Firefighters are not included as a bargaining unit for the reasons set forth earlier.

¹⁸ Except for the exceptions listed herein, it appears that all employees have received the same wage increase percentages.

employee morale and create dissension in the workplace or make bargaining more difficult since a particular bargaining unit would be reluctant to settle first for fear of being left behind by other bargaining units that may be successful in negotiating higher wage increases.

As I have pointed out in other interest arbitration awards, this argument can have a negative impact on the bargaining process. This practice virtually eliminates collective bargaining and locks every other labor organization into what was negotiated by the first labor organization. It is an incentive for an employer to set the wage rates for unrepresented employees first and then negotiate with the weakest labor organization for identical wage packages. It also has the effect of eliminating external market considerations as well as the difference in internal job demands.

This is why this Arbitrator does not believe that simply fashioning awards solely for the purpose of maintaining internal consistency in wage increases is appropriate in all circumstances. Wage equity goes beyond giving the same wage increase to all employees if compelling reasons exist to deviate from general wage increases established for other employees. This is especially true where the group in question is being left behind in the external market place.

However, I am not convinced the Federation's wage compression argument is a reason to award wage increases to the top patrol Officers in 2010. There may be some compression; however, the short tenure to top patrol Officer as well as the short duration (6 months) between steps in and of themselves will cause compression. The Federation failed to establish that this alleged wage compression is being currently exacerbated,

since no data on wage levels prior to the current contract term was presented to establish that wage compression was an issue that this Arbitrator need address. Further, the relative short time period to top patrol Officer diminishes any compression argument.

The Federation's data discloses that regular Officers are at the bottom of the totem pole when you compare their base top patrol pay level to police officers in other comparable cities. I do not know if this is a historical or a recent phenomenon since this data was not proffered by either party. It seems logical that the Officers would be at a lower top patrol wage level base since they reach this threshold earlier in their tenure than most of the police officers in comparable cities. In this regard Officers are already receiving longevity before fellow police officers reach top patrol pay.

The fact that half of the Officers are also Paramedics and receive a 7% premium has to be factored in when analyzing comparable "real" wage levels. Longevity with its concurrent number of steps and time period to each step as well as the premium associated with each step is also a factor in determining "real" wages.

Therefore, I am not convinced that measuring the Officers' wage level standings with other police officers in comparable cities based solely on the top patrol wage level criterion is the most appropriate or accurate measurement. When these additional variables are factored in, the Officers' ranking in the Federation's police officer

comparative city chart could be higher. Just what their ranking would be cannot be determined from the information furnished to this Arbitrator.¹⁹

Based on the foregoing, the Federation has failed to establish that their wage proposals based on external considerations are warranted.²⁰

In view of the foregoing the City's wage proposal for 2010 is awarded. Appendix A in the new Agreement will reflect that all Officers will receive a 2% wage increase (COLA) effective December 31, 2010.

The City's 2011 wage proposal offered to the Federation is that same wage proposal offered to other bargaining units and imposed on unrepresented employees. Only the Clerical unit has agreed to this proposal. This hardly constitutes a basis to impose it on the Officer unit. Few contracts have been settled in the comparable cities for 2011, and those that have average approximately 2%.²¹ Although the current CPI is hovering around 1.5%, based upon the turmoil in the Middle East that has affected oil prices and the rise in food prices because of grain shortages and increased manufacturing costs, there is a high probability that the CPI will increase in coming months.

For these reasons, I will award the Federation Officer's unit a 2% wage increase (COLA) with 1% effective January 1, 2011 and an additional 1% effective July 1, 2011. Appendix A in the new Agreement will reflect that the Officers will receive a 1% wage

¹⁹ Some of these cities also receive a stipend that was also not factored in, which needs to be done in order to determine the "real" base rate of all officers in the comparable group.

²⁰ In making this award, I am not adopting the City's 25-year projected earnings history argument. More empirical evidence needs to be developed before this 25-year wage model can be validated.

²¹ City Attachment 16.

increase (COLA) effective January 1, 2011 and an additional 1% wage increase (COLA) effective July 1, 2011

ISSUE 4 — SHORT TERM DISABILITY — ELIGIBILITY FORMULA — ARTICLE XXIV

Current Contract

24.1 Short-term disability benefits shall be paid to such an employee who shall have missed twenty (20) consecutive working days' employment due to illness or injury.

24.3 Any employee receiving payments under the short-term disability benefit plan shall not accrue annual leave during the period of time of disability. In order to qualify for short-term disability benefit, the employee shall submit medical documentation from a physician certifying that the first twenty (20) consecutive working days of the employee's absence was due to injury or illness.

24.8 Each new event which results in short-term disability benefits shall be preceded by a new waiting period of twenty (20) consecutive working days. Each new event shall be subject to the provisions of Article

Federation Proposal

The Union is proposing to shorten the waiting period from 20 days to 5 days.

City Proposal

The Employer is not proposing to change the existing language of the Agreement.

FEDERATION POSITION

The Union argues that this request is more than justified. Prior to 1991, the City had separate sick time and vacation banks. At that time, an Officer had to use 160 hours of its unlimited sick time bank before short term disability (STD) benefits would be paid without any effect on earned vacation time. Sick leave bank was capped at 960 hours.

When the benefits were combined in 1991 into “annual leave” (AL), an accrual cap of 240 hours was established; however, the 160 hour waiting period remained.²²

Currently, it takes new hire Officers 14.5 months working without any time off to earn enough AL to protect them financially if they have to use STD.²³ It also takes new hire Officers 22 months without any time off to accumulate 240 hours of AL. Since AL is only bankable to 240 hours, an Officer has to keep 160 hours in reserve to cover any unforeseen non-work related illness or injury. This results in Officers having only 80 hours or 6.6 days available for any or all vacations, sick leave, death of a family member, etc., assuming they had enough time in grade to be able to bank 240 hours,

The Federation stated that it was difficult to document STD benefits in other comparable cities since most cities do not have STD benefits in their contracts or city policies. This is due to the fact that a lot of cities still have separate sick/vacation banks. This was true in 12 of the 18 cities that the Federation was able to survey. The Federation also found out that several cities offer a third party STD policy either paid for by the city or negotiated lower rates.

A survey of 18 comparable cities discloses that City Officers and Crystal police officers have the lowest hours (240) of combined bankable sick leave and vacation time. In the four other cities that also combine their bankable sick leave and vacation time, the range is approximately 440 hours to just over 500 hours.²⁴ In the 12 cities that have

²² Current Officers, two of whom are still working, were grandfathered in.

²³ Officers accumulate 5.5 hours per two week pay period of AL for 0-7 years and 7.39 hours from 8-15 years and 8 hours thereafter.

²⁴ The exact amount cannot be determined by the chart.

separate banks, the combined bankable hours range from a low of slightly less than 500 hours to approximately 2,200 hours.

Since at least 2006, the City has implemented a leave donor program whereby fellow Officers can donate leave to those Officers that do not have enough AL to satisfy the 160 hour waiting period. Without this donor leave, Officers would have to take unpaid leave for the hours' shortage. According to the testimony of Detective Jared Landkamer he used donated AL to satisfy the STD waiting period in 2006 and at least two other Officers have done so since. Evidence was also presented at the hearing that no Officer used STD benefits in 2010.

The federation proposed two alternatives to its proposed reduction in eligibility time. Leave STD benefits at 20 working days and raise AL banks to 400 hours with the agreement that a max of 240 hours will be paid out upon separation from employment. (Option 2) Leave STD at 20 working days and all eligible employees shall accrue a separate Emergency Illness or Injury Bank for hours at 6.5 hours per pay period. That EIIB would never be able to exceed 160 hours and would not be subject to payout to the employee upon separation from employment. In the event, an employee becomes injured or ill, and applies the 160 hours in their EIIB towards the 20 working days needed to get STD benefits, their EIIB would resume to accrue 6.5 hours per pay period upon their return to unrestricted duty. Also no hours in the EIIB could be used towards the use of any other PTO, i.e. AL. (Option 3)

CITY POSITION

The Employer argues that the Union has the burden to show the need to shorten the short-term disability benefit period and has failed to do so. All other city employees have the same 20 day waiting period. This policy has existed for many years dating back to at least 1991. There is no rational basis to change the existing language. This is a negotiated benefit that should be addressed in negotiations. To award this benefit change to the Officers would be inequitable to other employees. This Arbitrator, as well as other arbitrators, has stated that the party requesting to change or add new language to a collective bargaining agreement bears the burden of proof by clear and convincing evidence that the new or changed language is justified. Adding that, internal consideration is the primary consideration for determining fringe benefits in interest arbitration.

DISCUSSION AND AWARD

The Union is seeking to change the existing waiting period of 20 days to five days citing hardship on Officers and the disparity in sick leave and vacation banks for police officers in comparable cities. In doing so, the Officer unit is seeking to change a contract benefit that all other bargaining unit and unrepresented employees currently enjoy. The City is correct that this Arbitrator and other arbitrators have ruled that annual leave, vacation time and sick leave are fringe benefits; and that absent clear and convincing evidence or compelling reasons, it should remain internally consistent.

Even crediting the Federation, current STD benefit waiting periods do not have a significant impact on unit Officers. Only three Officers at most have encountered STD

benefit waiting period shortfalls in the last four years, and none have suffered a financial loss due the AL donor program currently in effect. In addition, the Federation was only able to establish that five comparable cities have STD benefits.. It also failed to identify what the STD benefit was thereby failing to identify any disparity, if any, between City STD benefits and those in comparable cities.

What the Federation did establish is that comparable cities have higher leave banks than the City. It even suggested an alternate solution (Option 2) to their STD benefit proposal — have this Arbitrator increase the Officers leave bank to be more in line with other comparable cities' police officers. This is something I cannot do. To issue such an award would go beyond the scope of this Arbitrator's authority. It would result in changing a provision of the contract (Article XXII Annual Leave) that BMS Commissioner Hoffmeyer has not certified as an issue to be adjudicated.

The Federation has failed to demonstrate by clear and convincing evidence or compelling reasons that the language in Article XXIV should be changed or a new section added as proposed in the Federation's Option 2. Any change in Article XXXIV or change in Article XXII as the Federation in reality is attempting to change is best left to the negotiating table. In view of this, the language in the new Agreement will remain unchanged from the predecessor Agreement.

AWARDS

ISSUE 1— DURATION LENGTH OF AGREEMENT — ARTICLE XVIII

The Union's proposal is awarded. The new Agreement will be effective from January 1, 2010 through December 31, 2011

ISSUE 2 AND 3 — WAGES 2010 AND 2011 — APPENDIX A

There will be a wage increase (COLA) of 2% for all Officers effective December 31, 2010 in Appendix A of the new Agreement. There will be additional wage increase (COLA) of 1% effective January 1, 2011 and an additional wage increase (COLA) of 1% effective July 1, 2011 in Appendix A of the new Agreement.

ISSUE 4 — SHORT TERM DISABILITY — ELIGIBILITY FORMULA — ARTICLE XXIV

There will be no change from the predecessor contract language in the successor contract language effective January 1, 2010 through December 31, 2011.

Dated: February 5, 2011

Richard R. Anderson, Arbitrator