

**IN THE MATTER OF INTEREST ARBITRATION BETWEEN**

Law Enforcement Labor Services, Inc.

and

**BMS Case No. 12 PN 0441**

City of Willmar

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**NAME OF ARBITRATOR:**

George Latimer  
Assistant James St. Peter

**DATE AND PLACE OF HEARING:**

June 28, 2012  
Willmar, MN

**BRIEFS RECEIVED;**

July 16, 2012

**DATE OF AWARD:**

August 13, 2012

**APPEARANCES**

**FOR THE CITY:**

Frank J. Madden, Attorney for City of Willmar  
Charlene Stevens, City Administrator  
Audrey Peterson, Administrative Assistant

**FOR THE UNION:**

Kevin McGrath, Business Agent, LELS  
Mike Anderson, Sergeant with Willmar Police Department  
Chad Oaklead, Patrolman with Willmar Police Department

## **INTRODUCTION**

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. § 179A.01-30. Law Enforcement Labor Services, Inc. (Union) is the exclusive representative for the Patrol Officers and Sergeants employed by the City of Willmar (Employer or City).

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. § 179A.16).

The parties are signators to a collective bargaining agreement, signed on August 20<sup>th</sup>, 2010. This collective bargaining agreement between the parties expired on December 31, 2010. The parties negotiated for a successor agreement and agreed to some but not all provisions. Pursuant to Minn. Stat. § 179A.16, subd. 2, and Minn. R. 5510.2930, on March 13, 2012, the Bureau of Mediation Services certified the following issues for interest arbitration:

- 1. Wages 2011: Increase, If Any, for Patrol and Sergeant Rates – Art. 25.1**
- 2. Wages 2012: Increase, If Any, for Patrol and Sergeant Rates – Art. 25.1**
- 3. Health Insurance 2012: Employer Contribution Amount/Formula – Art. 18.1**
- 4. Health Insurance 2012: Amount of Employer Contribution for New Hires – Art. 18.1**

A hearing was held on June 28, 2012 at the Willmar City Hall, in Willmar Minnesota. Both parties had full opportunity to submit documents and arguments into the record. Written closing briefs were received by the Arbitrator on July 16, 2012 and the record was closed.

## **UNION FINAL POSITION**

1. Wages 2011 and 2012: Increase, If Any, for Patrol and Sergeant Rates Article 25

The Union is requesting a two percent (2%) increase in wages over the 2010 wage rates for Patrol Officers and a three percent (3%) increase for Patrol Sergeants, effective January 1, 2011.

2. Wages 2012: Increase, If Any, for Patrol and Sergeant Rates Article 25

The Union is requesting a two percent (2%) increase in wages over the 2011 wages rates for Patrol Officers effective January 1, 2012. The Union is requesting a three percent (3%) increase in wages over the 2011 wages rates for Patrol Sergeants effective January 1, 2012.

3. Health Insurance 2012: Employer Contribution Amount/Formula Article 18.1

The Union is requesting that the language in the 2010 labor agreement be amended for 2012 as follows: The Employer will contribute ~~up to ninety (90%)~~ *eighty-five (85%)* percent of the cost of the monthly premium for dependent coverage under the basic plan. Any additional cost shall be paid by employee through payroll deduction.

The Employer will contribute ~~up to fifty (50%)~~ *eighty-five (85%)* percent of the increase in cost of the monthly premium for dependent coverage under the basic plan. Any additional cost shall be paid by employee through payroll deduction.

The Employer agrees to provide, at the Employer's expense, for all employees under this Agreement, an insurance program for hospitalization and major medical coverage comparable with the plan under existence, with the option of dependent coverage. If the employee chooses dependent coverage, the Employer shall pay the cost of dependent coverage:

A. The Employer will contribute eighty-five (85%) percent of the cost of the monthly premium for dependent coverage under the basic plan. Any additional cost shall be paid by employee through payroll deduction.

**(note this change is not indicated in legislative format)**

B. The Employer agrees to provide optional individual and dependent group under annual renewal date or at any open enrollment date sponsored by BC/BS. The cost of the optional health coverage shall be in addition to the base health plan cost sharing arrangement and will include the premium difference between the base plan and the Aware Gold plan being paid in full by the employee.

In the event the Employer for whatever reason discontinues its relationship with BC/BS, the option to subscribe to Aware Gold health coverage will no longer be available to employees.

C. The City will implement a VEBA Plan as an additional option provided there is a minimum of at least 10 employees enrolled City-wide.

#### 4. Health Insurance 2012: Amount of Employer Contributions for New Hires – Article 18.1

The Union is requesting no change in the Employer Contribution for new hires.

#### **EMPLOYER FINAL POSITION**

##### 1. Wages 2011: Increase, If Any, for Patrol and Sergeant Rates Article 25.1

No general increase.

##### 2. Wages 2012: Increase, If Any, for Patrol and Sergeant Rates Article 25.1

1.0% general wage increase, effective January 1, 2012.

##### 3. Health Insurance 2012: Employer Contribution Amount/Formula Article 18.1

The Employer agrees to provide at the Employer's expense for all regular fulltime employees and probationary employees under this Agreement, an insurance program for hospitalization and major medical coverage comparable with the plan under existence with the option of dependent coverage. For employees hired in 2012 and thereafter, the Employer shall contribute up to \$549 per month toward the cost of single coverage and up to \$1,302 per month toward the cost of family coverage. Any additional costs shall be paid by the employee through payroll deduction. If the employee chooses ~~dependent~~ family coverage, the Employer shall pay the following toward the cost of ~~dependent~~ family coverage.

A. (Delete first two sentences) For 2012, the Employer will contribute up to \$1,302 toward the cost of family coverage. Any additional costs shall be paid by the employee through payroll deduction. For 2013 and annually thereafter for employees hired prior to 2012, The Employer will contribute up to fifty (50%) percent of the increase in the cost of the monthly premium for family ~~dependent~~ coverage under the basic plan. Any additional cost shall be paid by the employee through payroll deduction.

#### 4. Health Insurance 2012: Amount of Employer Contributions for New Hires Article 18.1

For employees hired in 2012, the Employer shall contribute up to \$549 per month toward the cost of single coverage and up to \$1,302 per month toward the cost of family coverage.

## **UNION ARGUMENTS: WAGE INCREASE**

### **1. Ability to Pay**

The cost of the Union's request for a 2% wage increase for patrol officers and 3% increase for sergeants is approximately \$37,585.60 in 2011 and \$38,348.40 in 2012, a combined total for the two year period of \$76,024.00. It argues that since this is about one half of a percent of Willmar's 2010 unreserved fund balance, it is very affordable. The City's governmental funds (combined) ending balance at year end in 2010 was \$38,712,401. Of this total amount, approximately 77% was available for spending at the City's discretion. (Union Ex. 6, page 25).

The City of Willmar has financial viability. This can be measured by its substantial monetary reserves and its Moody's Aa2 bond rating, assigned to it in June 2010. These factors allow the City to meet all its debt obligations. In the Summary of the Council and Staff Retreat prepared by Larson & Allen LLP on March 31, 2009, "The city's financial position is strong." The Union argues that although Local Government Aid had been reduced, it is still substantial. Since 2008, the City of Willmar has received over 4 million dollars per year in LGA.

At the end of 2010, Willmar's unreserved fund balance for the General Fund was \$24,155,705, or 175% of the total General fund expenditures of \$13,737,998, well above the State's Auditor's recommended range of 35-50%. (Union Ex. 6, page 44, 53)

In the Minnesota City Finances reports published by the Office of the State Auditor for 2010 Revenues, Expenditures, and Debt shows the City of Willmar as having 175.8% Unreserved as a Percent of Current Expenditures (Table 19: Percent Change of Unreserved Fund Balances in the General Fund and Special Revenue Funds Unreserved Fund Balance as a Percent of Total Current Expenditures).

The City's ability to pay was illustrated when it gave the new City Administrator an \$8,374.00 (or 7.57%) increase in 2011.

Individuals and businesses are attracted to the City. Economic development is reflected in the transformation of the empty state hospital into the MinnWest Technology Campus, which bills itself as the largest privately owned technology campus in the United States.

Thus, the Union believes that the Employer has the ability to pay the requested wage increases. The Union's wage request is reasonable and affordable. The Employer conservatively budgets revenues. LGA was paid to the City. And despite spending down its revenues, the City's Unreserved Fund balance was greater than 38 million dollars in 2010. (Union Ex. 6, page 25).

## **2. Pay Equity**

The Pay Equity Act requires arbitrators to consider equitable compensation relationships *together with other standards appropriate to interest arbitration.* (Minn. Stat. 471922, Subd.2).

The City of Willmar is currently not in compliance with the Pay Equity Act. In the *Guide to Understanding Pay Equity Compliance and Computer Report*, published in November 2011, "The minimum requirement to pass the statistical analysis test is an underpayment ratio of 80%." According to the January 2012 *Minnesota Local Government Pay Equity Compliance Report*, the City of Willmar failed the salary range test. (Page 11). In the City's Compliance Report, the Underpayment Ratio was 73.95%.

LELS ran the City's compliance report with the addition of the Union's 2011 and 2012 wage increase proposals, and found the under payment ratios went up to 81% and 80.1% respectively. (Union Ex 7, at 132, 152). Therefore, it argues if its wage proposal is awarded, the City will move into compliance with the Pay Equity Act.

### 3. External Comparisons

The Union used the following Minnesota non-metro cities for its external comparisons: Alexandria, Buffalo, Elk River, Hutchinson, Marshall, New Ulm, Northfield, Sartell, Sauk Rapids, and St. Peter. The Union argues its list of jurisdictions is more comparable to Willmar than the City's list. All the cities on the Union list are non metro with populations 10,000 above or below Willmar's, and all but Northfield (also on the Employer's list) are within 100 miles. The Employer's list includes cities geographically well removed from Willmar. It also objects to the Employer's inclusion of Hibbing for a number of reasons. Hibbing's economic situation is very different from Willmar's, in that it relies heavily on the iron mining and tourism industries. It has a much smaller tax capacity. In addition the fact that Hibbing's labor agreements provide for retiree health care benefits, has depressed the wage rates. As a result, it is an outlier in having lower wages in its law enforcement contract.

The Union argues only *two* of the *ten* comparable groups for patrol officers received consecutive 0% increases in both 2010 and 2011. No one in the comparable group received consecutive zeros in 2011-2012. (Union brief and tab 8).

The average wage increase for the patrol officers comparable group was 1.28% in 2010, 1.05% in 2011, and 1.20% in 2012. The average wage increases for patrol sergeants was 1% in 2010, 1.92% in 2011, and 1% in 2012. These averages are above the Employer's proposal.

In addition the Union argues Willmar patrol officers' wages have been declining compared to the average of the comparable group, from a margin of \$136.57 above the average monthly wage in 2009, to \$76.68 in 2010. The Employer's proposal would reduce that margin to about \$27 in 2011 and \$16 in 2012. The Union argues that the requested wage increases are

necessary to maintain its ranking within the comparable groups and stop the wage decline from the averages.

In terms of comparable ranking, the Union's ranking charts show the patrol officers in fourth place in 2007, falling to fifth in 2010. If the City's wage proposal is awarded, the patrol officers would fall from fifth place position to sixth for 2011, and then back to fifth for 2012, still below its 2007 fourth position. (Union Ex. 7, pages 179-184).

Therefore, the Union believes the external comparisons favor its wage position. The rankings for both groups (Sergeants and Patrol Officers) are better preserved with the Union's wage proposal. The City's proposed wage increase is less than the average and considerably less than the 2010-2012 increases negotiated by St. Peter, New Ulm, and Sauk Rapids.

#### **4. Internal Comparisons**

The Union argues that awarding a wage package based on the City's internal consistency argument is not appropriate for a number of reasons:

- There are many differences between bargaining units including the nature of work performed, training required, level of responsibility, risk factors on the job, etc.
- The Union's proposal for a higher wage increase for Sergeants is necessary because there is a very slight difference in the current wage levels between sergeants and officers (wage compression).
- There is no real internal pattern, since one bargaining unit's contract has not settled yet, and the city council has not set salaries for non-union employees. In addition the Employer's final position leaves out the \$660 lump sum included in the two AFSCME agreements, therefore its position is inconsistent.

Finally the Union argues that interest arbitration is a process which substitutes for a strike. Therefore the appropriate framework for the Arbitrator is to discern what contract terms would settle a strike, rather than what terms the parties would have agreed to in regular bargaining.

## **5. Economic Forces**

In 2011, Towers Watson, a global consulting firm, specializing in risk management and human resources consulting, reported employers were planning the largest merit increases since the start of the financial crisis. (*U.S. Workers to Receive Largest Merit Increases Since Start of Financial Crisis, Towers Watson Survey Finds*, <http://www.towerswatson.com/press/3881>). The survey found that hiring freezes were thawing and many employers were budgeting increases of 3% for 2011.

The Consumer Price Index (CPI) for Urban Earners in 2010 was 2.6%, when the unit's members received 0% wage increase. In 2011 the CPI was 3.7% and 1.2% the first half of 2012. When compared with the wage offer from the Employer, the Union is falling behind in purchasing power when wages remain stagnant. "If wages merely match the CPI, then purchasing power would never increase and workers would never find themselves in an improved financial position." (Union brief).

## **UNION ARGUMENTS: HEALTH INSURANCE**

The Employer has proposed a new (dollar cap) contribution formula for employees hired from 2012 on. The City proposal fundamentally changes the structure of the health care language, bargained language which has been in place since 2003. The Union argues it would never have agreed to such a drastic change in the benefits language, and that the City's desire to strip out the bargained insurance language is part of what led to the current arbitration. If the

Employer's position is granted, employees working side-by-side would have very different benefits.

The Union's proposal maintains the current structure of the health insurance language. It reduces the City's contribution for single coverage from 90% to 85%. It also increases its contribution to any annual increases in dependent coverage to 85%, from the current 50%.

The Union argues the Employer does not have a compelling reason to change the existing insurance formula, and that the Employer has substantial financial resources to fund any health care cost increase resulting from the language proposed by the Union.

#### **EMPLOYER'S ARGUMENTS: WAGE INCREASE**

The Employer argues that the economic downturn of the last four years is a significant consideration in the City's overall financial situation, and in turn its ability to pay wage increases. Specifically it asserts several negative economic trends:

- Willmar relies on Local Government Aid to fund 1/3 of its general fund reserves. Since 2008, the City has lost over \$1.6 million in LGA through unallotments and reductions; a \$429,485 loss from 2011 to 2012 (Employer Exhibit 21, testimony of Charlene Stevens).
- Willmar's tax capacity decreased by over \$1 million from 2011 to 2012.
- The City has made a number of efforts to economize in recent years, including reducing capital expenditures and eliminating eight staff positions.
- Funds which the Union argues are unreserved (U Ex 44) are in fact designated; therefore the unreserved fund balance is actually 0% (Employer brief p.12).
- Even if the City did have a fund balance, that should be considered 'one-time money' and should not be used to fund the on-going costs of wages.

- It is true that the City has a strong bond rating. Continuing to be fiscally prudent will help maintain that strong rating, important for the City's ability to borrow money.

The environment for resolving collective bargaining agreements – both in negotiations and interest arbitration – has changed significantly in recent years in light of the State budget crisis, the significant reductions in State aid to local units of government and the current economic climate.

## **2. Internal Comparisons:**

The City's final position is similar to the pattern of wages negotiated for other bargaining units for 2011 and 2012. There are three other bargaining units within the City, including an AFSCME General unit with 32 members, an AFSCME Public Works unit with 22 members and a local association of Department Heads, Supervisors and Confidential Employees with 17 members. The two AFSCME units' contracts are settled.

The Employer argues internal consistency should be given more weight than market comparisons, in recognition that the maintenance of a uniform pattern in compensation maintains labor relations stability and encourages unions to engage in serious, good faith bargaining. It maintains the City of Willmar has historically maintained a uniform pattern of general wage increases. The AFSCME General unit and AFSCME Public Works unit are settled for 2011 and 2012. The pattern of settlements is as follows:

2011 – 0% general wage increase effective 1/1/2011

2012 – 1.0% general wage increase effective 1/1/2012

\$660 non-base lump sum payment

The Employer asserts a fundamental principle in interest arbitration is that the interest arbitration process should not provide rewards beyond that which the parties would have secured

through collective bargaining. The role of the interest arbitrator is to determine what the parties themselves would have agreed to voluntarily, and the internal settlement pattern provides evidence of what the parties would have ultimately agreed to.

The City's final position on wages is similar to the uniform internal pattern. In contrast, the Union's position for 3.0% wage increases for Sergeants (2011 and 2012), and a 2.0% increase for Patrol Officers (2011 and 2012) ignores the internal pattern and the current economic climate. The City submits that the Arbitrator should not award wage increases greater than the pattern of settlements that have been negotiated with the other bargaining units. To award wages greater than the internal pattern set as a result of negotiated settlements will encourage interest arbitration and undermine the collective bargaining process.

### **3. Pay Equity**

In addition to the City following the uniform internal pattern, the City argues that pay equity is an extremely important factor in the proceeding. Pursuant to the Minnesota Pay Equity Act, Minn. Stat. § 471.9191, the City is required to establish and maintain "equitable compensation relationships" between male-dominated and female-dominated classes of employees within the City. The Police Officers and Sergeants are both male dominated classifications. The Pay Equity Act was not enacted to benefit male-dominated or balanced classes of employees. The purpose of the Minnesota Pay Equity Act (MPEA) was to "address sex-based wage disparities in public employment between members of male-dominated versus female dominated classes and MPEA is intended to operate in favor of female-dominated classes; it is not intended to eliminate perceived wage disparities for everyone in the state, regardless of gender." (*Armstrong v. Civil Service Commission of the City of St. Paul*, 498 N.W.2d 472 (Minn. Ct. App. 1993).

The City previously received a notice of non-compliance from the Department of Employee Relations (now Management and Budget). The City has resubmitted its Pay Equity Report to the (MMB), and is currently awaiting notification from the Department regarding its compliance. Any deviation from the uniform City settlement pattern creates exposure for Pay Equity noncompliance. Non-compliance with the Act would subject the City to penalties in the form of withholding of state funds.

The Employer argues that the Union's "mock" Pay Equity Compliance Report, which it generated based on its own input of data, is incorrect and incomplete, and that the software utilized by MMB to test each jurisdiction's compliance with the Pay Equity Act is extremely sensitive to even minor changes. Furthermore, it is the City, not the Union, who will be held accountable for compliance with the Pay Equity Act. The City submits that it is critical for the Arbitrator to focus on internal comparisons in order to ensure compliance with the Pay Equity Act.

#### **4. External Comparisons**

While the City submits that consideration of internal comparisons and internal consistency should be the primary focus, it also argues its own analysis of the external comparisons. The City has provided data from a 5 Above / 5 Below Population Comparison Cities group. These cities are: Albert Lea, Austin, Buffalo, Elk River, Faribault, Hibbing, Northfield, Red Wing, and Sartell. The City has also provided data from Greater Minnesota Cities with populations that range from 10,000 to 20,000. These cities include: Albert Lea, Buffalo, Grand Rapids, Hibbing, Hutchinson, Marshall, New Ulm, Northfield, Red Wing, Sartell, and St. Peter. It maintains that based on the comparisons with these cities, the City's

final position for 2011 and 2012 results in very competitive wages for Patrol Officers and Sergeants.

Lastly, retention and attraction are a component of market comparison and the City has had excellent retention and attraction of applicants in its LELS unit. The LELS unit includes long-term employees, some of whom have been employed by the City since 1981. Whenever Patrol Officer vacancies have occurred, sufficient applications have been received. As recently as February 2012, the City received 124 applications for a vacant Patrol Officer position. This data is indicative of the City's competitive wage and benefits package.

**EMPLOYER ARGUMENTS: HEALTH INSURANCE**

The current health insurance language in the LELS collective bargaining agreement and the current practice for calculation of insurance contribution has been in place since 2004. The contract language in Article 18, Section A states as follows:

The Employer will contribute up to 90% of the cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

The Employer will contribute up to fifty (50%) percent of the increase in the cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

This same contract language has been in place for the AFSCME General unit and the AFSCME Public Works unit since 2004. The same calculation has occurred annually since 2004 when a rate increase has occurred. Each year that the insurance rates changed, employees received a memo outlining the change in contribution.

For 2011 and 2012, the City negotiated with AFSCME General unit and the AFSCME Public Works unit the following language:

The Employer agrees to provide, at the Employer's expense, for all employees under this Agreement, an insurance program for hospitalization and major

medical coverage comparable with the plan under existence, with the option of dependent coverage. For employees hired in 2012 and thereafter, the Employer shall contribute up to \$549 per month toward the cost of single coverage and up to \$1,302 per month toward the cost of family coverage. Any additional costs shall be paid by the employee through payroll deduction. If the employee chooses ~~dependent~~ family coverage, the Employer shall pay the following toward the cost of ~~dependent~~ family coverage:

- A. The Employer will contribute up to ninety (90%) percent of the cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

For 2012, the Employer will contribute up to \$1,302 toward the cost of family coverage. Any additional costs shall be paid by the employee through payroll deduction. For 2013 and annually thereafter for employees hired prior to 2012, the Employer will contribute up to fifty (50%) percent of the increase in cost of the monthly premium for ~~dependent~~ family coverage under the basic plan. Any additional cost shall be paid by the employee through payroll deduction.

The City argues “It is a well-established principle in interest arbitration that arbitrators closely adhere to internal consistency with the health insurance language and contribution formulas negotiated with the other bargaining units in the same jurisdiction.” For almost 10 years, the City has maintained an internally consistent pattern of health insurance language, and consistent practice regarding calculation of the contributions toward health insurance among the LELS unit, AFSCME General unit, and AFSCME Public Works unit

The City’s position in this proceeding is the same as the language change bargained with the two AFSCME units. The City’s position maintains the internal consistency with regard to the health insurance language and contribution formula, and therefore should be awarded.

## **ARBITRATOR'S ANALYSIS AND AWARD**

### **Wages**

It is axiomatic that the Arbitrator's duty in interest arbitration is to come as close as possible to the outcome the parties would have reached had negotiations been completed without impasse. The Union argues that arbitration should be seen as a replacement for a strike. That might be a distinction without a difference, but in any event the Arbitrator sees no reason to adopt that standard.

Discerning what the negotiations outcome would have been is easier said than done. It requires a Solomon-like decision to resolve serious questions. These questions include the relative weight accorded to the City's ability to pay, internal and external wage comparisons, appropriate comparison groupings, the proposed two-tier medical coverage, the role of pay equity compliance, and the claim of wage compression on Sergeants' pay. Since Solomon is not available, what follows is this Arbitrator's decision on the competing values advanced by able advocates.

There are threshold determinations necessary to frame a fair judgment. The facts here do not lead this Arbitrator to adopt the City's claim that internal comparisons should dominate all other traditional tests. First, it assumes a symmetry unproven since it fails to include the wages or health benefits of the 17 employees in the independent association. More importantly, Employees are in different bargaining units for legitimate reasons. Various city employees perform different functions, with different responsibilities under different conditions, requiring different training. In Willmar they are represented by different exclusive representatives. Employers commonly argue that awarding a more generous settlement to a unit through arbitration will encourage 'whip saw' bargaining. This is a legitimate concern, but one which

cuts both ways. To entirely adopt this view potentially leads to a situation where the first bargaining unit to settle its contract, determines terms and conditions for all other units. This would effectively strip exclusive representatives of their right to bargain.

Ability to pay, general economic conditions, and external comparisons present a balanced and fair framework, which are universally argued at the bargaining table. There is no compelling reason to abandon those tests in an arbitration intended to extend, but not supplant, the bargaining process.

As to the external market, the group chosen by the Union is preferable. Geographic contiguity and greater economic similarity compose a realistic comparison group and is adopted in this matter.

After review of the parties' submissions related to the pay equity issue, it appears this arbitration is not going to resolve the question. How the City's second report will be judged by DOER (now MMB) remains uncertain, as is the effect this award would have. The Arbitrator is not persuaded by the Union's argument that Willmar would come into pay equity compliance with its wage proposal. Neither, however, is the Employer's argument persuasive, since the City is already deemed not in compliance, and it has not made a clear case that this unit's settlement will change that status. What is clear is that there are many pieces affecting the City's pay equity status, including actual and expected pay ranges for members of the independent association, and for non-unionized management employees.

As to ability to pay, the Arbitrator agrees that the City can afford the cost of the Union proposal. That finding, however, does not resolve the issue since the ability to pay does not carry with it the requirement that it *should* be paid. Affordability is not the controlling factor in this case.

With respect to external comparisons, the Union argues the City proposal would mean a “drastic decline in comparable wages for patrol officers.” This argument is based on a decline in the margin above the average (emphasis added). The Union’s figures show a decline from 2009 to 2010 under the previous agreement. The Union’s figures show that the City’s proposal would cause a further decline, to only \$16.23 above the average for patrol officers in 2012. In raw dollars this unit would remain above the average under either proposal, with a small variation in how much above the average. This data is not significant enough to persuade the Arbitrator the Union’s proposal must prevail.

In looking at the wage increases negotiated for law enforcements units in surrounding jurisdictions, it is appropriate to give consideration to both average wage increases, and of Willmar’s rank among the jurisdictions.

In that regard, the average percentage of Patrol Officer wage increase negotiated for 2011 was 1.045%. The average percentage of Sergeant wage increase for the same year was 2.23%. In 2012, the average increases were 1.1% for Patrol Officers and 0.89% for Sergeants, respectively.

In terms of ranking among the external comparable groups, if the Willmar patrol officers received a 1% increase in both 2011 and 2012, they would remain at the same ranking they were ranked in 2010, which was 5<sup>th</sup>. If the Willmar Sergeants received a 2% increase in both 2011 and in 2012, they would remain at the same ranking they were in ranked 2010, which was 4<sup>th</sup>.

Providing a slightly higher increase for Sergeants would help address the compression problem identified by the Union.

Therefore, in making the best effort to fashion a wage settlement close to what likely would have been reached through the parties’ own negotiations, the Arbitrator awards the Patrol

Officers a 1% wage increase for 2011, and a 1% wage increase for 2012. The Arbitrator awards the Sergeants a 2% wage increase for 2011, and a 2% wage increase for 2012.

## **Insurance**

The issue of health care costs and the burdensome increases to those costs is an ongoing dilemma for both employers and unions. In many cases this has become the biggest obstacle to settling contracts.

The Arbitrator agrees with the Employer that having internal consistency is desirable when it comes to health benefits. In a situation where there is an established health benefits structure applying to all bargaining units and other employees, a proposal from one party to significantly change that structure would be a difficult case to make, and probably should not be awarded by an arbitrator.

Here, however, the circumstances are not so clear. In this case there was an established structure in place for approximately 10 years. This structure applied to the LELS and AFSCME bargaining units, and applied to all employees in the same way within the units.

The City proposal is to significantly change the health benefits structure, in keeping with a new and very recent agreement with two of the three other Willmar bargaining units. The specific change agreed to with the two AFSCME units will in fact create an inconsistent application of health benefits among employees. There will be two different benefit contribution formulas; one applying to new employees and one to current employees.

Two of the arguments in favor of LELS conforming to the current AFSCME contracts, are fairness between different employees and the resulting positive morale effects; and ease of administration in the mechanics of enrolling and delivering the benefits. These arguments are

considerably weakened by the nature of the 'two tiered' benefits approach. In other words, the disadvantages of internal inconsistency will exist anyway.

In addition, there is the general principle that for an arbitrator to award any significant change in contract language, compelling or very persuasive reasons should be demonstrated. At this time, no such compelling reason has been shown by the City.

Therefore, the Arbitrator declines to award the change proposed by the Employer to Article 18.

For its part, the Union has proposed increasing the Employer share of the cost increases for family coverage from 50% to 85%. The Union has argued that a burden on employees has resulted in cost increases in family coverage over the years. This is an unfortunate fact of life, one which has affected the Employer as well. Again, to award a significant change as proposed here should require a compelling reason. The Arbitrator does not find the Union's arguments in favor of the change to be compelling, and so declines to award the change.

**FINAL AWARD**

- 1. Wages 2011: Patrol Officers will receive a 1% wage increase, effective January 1, 2011. Sergeants will receive a 2% wage increase, effective January 1, 2011.**
- 2. Wages 2012: Patrol Officers will receive a 1% wage increase, effective January 1, 2012. Sergeants will receive a 2% wage increase, effective January 1, 2012.**
- 3. Health Insurance 2012: Reduction from 90% to 85% for Employer contribution to single health coverage, effective January 1, 2012.**
- 4. Health Insurance 2012: No change in the Employer Contribution for new hires.**

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George Latimer, Arbitrator

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Date