

IN THE MATTER OF ARBITRATION BETWEEN

CITY OF ANOKA  
(Employer)

and

LAW ENFORCEMENT LABOR  
SERVICES, INC.  
(Union)

DECISION AND AWARD  
(Interest)  
BMS Case No. 12-PN-0477

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ARBITRATOR: Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: September 19, 2012 at the Anoka City Hall,  
Anoka MN

RECEIPT OF POST-HEARING BRIEFS: Both Parties submitted timely briefs by  
October 4, 2012.

APPEARANCES

FOR THE EMPLOYER/CITY:  
Scott Lepak, Labor Counsel  
Barna, Guzy & Steffen, Ltd.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Minneapolis MN 55433-5894  
(763) 780-8500

FOR THE UNION:  
Kevin McGrath, Business Agent  
Law Enforcement Labor Services, Inc.  
327 York Avenue  
St. Paul MN 55130-4090  
(651) 293-4424

THE EMPLOYER

The City of Anoka<sup>1</sup> was incorporated in 1878 at the confluence of the Mississippi and the Rum Rivers, some 20 miles NNW of Minneapolis, MN. The City is known as the "*Halloween Capital of the World*". The City also serves as the County seat for Anoka County. The City covers a Total Area of 7.2 square miles, of which 0.5 square miles is water. According to the 2010 census, the City's population is 17,142. The City currently employs approximately 144 employees, who are engaged in providing services, maintenance and support to the community and its citizens. One of those critical services is the City's full-time Police Department.<sup>2</sup> To insure that the Public Safety needs of the community are being met, the Department employs approximately 27 sworn, licensed officers

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<sup>1</sup> Also referred to as "City", "Employer" or "Anoka".

<sup>2</sup> Also referred to as "Department".

and some 16 non-sworn, unlicensed employees. The sworn personnel include a Chief of Police, a Captain, five (5) Sergeants and about 20 Patrol Officers. The City has ongoing collective bargaining relationships and labor agreements with the Union involving two separate bargaining units, one which includes the Sergeants and the second covering the Patrol Officers. Only the Patrol Officer bargaining unit is involved in this matter.

### THE UNION

Law Enforcement Labor Services, Inc.<sup>3</sup> is Minnesota's largest labor organization dedicated solely to the representation of law enforcement employees and related personnel throughout the State of Minnesota. The Union is headquartered in St. Paul MN and has numerous collective bargaining relationships and agreements with various cities, counties and other political subdivisions within the State of Minnesota; including the City of Anoka and its Police Department. As noted previously, LELS represents two separate bargaining units in the Department, the Sergeants and the Patrol Officers

### COLLECTIVE BARGAINING HISTORY

The Union and the Employer have been parties to a series of labor contracts covering the Patrol Officer unit employees since at least 2000 . The most recent contract was effective January 1, 2010 and expired December 31, 2010. The Parties have subsequently attempted to negotiate a successor contract, but those negotiations failed to resolve a number of issues.

### THE CURRENT ISSUES

On March 8, 2012, the Commissioner of the Minnesota Bureau of Mediation Services (BMS) certified the following issues for arbitration pursuant to Minn. Stat. §179A.16, Subd. 2:

- 1. Wages, General Increase – General Increase for 2011, if any - Article 15.**
- 2. Wages, General Increase – General Increase for 2012, if any – Article 15.**
- 3. Shift Rotation Pay – Adjustment for 2011, If Any – Article 15.**
- 4. Shift Rotation Pay – Adjustment for 2012, If Any – Article 15.**

As stipulated at the hearing, this Arbitrator was subsequently selected by the Parties, pursuant to Minn. Stat. §179A. Subd. 4., to hear and resolve these Issues.

The challenge to an arbitrator, in an Interest case such as this, is to try to formulate a suitable resolution based on what the Parties, as reasonable persons, would have eventually agreed upon had their negotiations proceeded to

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<sup>3</sup> Also referred to as "LELS" or "Union".

a successful conclusion. To achieve that goal and objective, like my arbitrator colleagues, I subscribe to a commonly accepted set of standards of analysis to be applied to an issue. These are the same standards that the Parties themselves applied in the context of their contract negotiations.

- Ability to Pay – Can the Employer reasonably afford to pay the requested wage or benefit amount without causing serious harm to the continued financial viability of the organization?
- Statutory Considerations – Does the contemplated resolution violate or conflict with any applicable statutes, rules or regulations?
- Internal Comparisons – How does the contemplated resolution fit within or affect the existing organizational pay system and structure? Does it maintain a reasonable and equitable relationship with other positions within the organization?
- External Comparisons – How does the contemplated resolution, if adopted in this organization, compare with like or similar positions in other comparative organizations?
- Other Economic and Market Forces – Do these forces, e.g. economic stability, supply and demand, cost of living, etc., have any notable effect - positive or negative - on the contemplated resolution?

I am also cognizant of the fact that while private sector Interest arbitration is bilateral – involving the employer and the employees and their union – in the public sector, it is trilateral, with at least three distinct and different interests to be accommodated; the employees and their union, the particular governmental unit as employer and the citizens, represented by that governmental unit, as voters, taxpayers and consumers of services. Also, to make the mix more interesting, those various parties, groups and constituencies each have their own distinct political and economic philosophies, perspectives and goals.

**ISSUES NOS. 1 AND 2 – WAGES – GENERAL INCREASE, IF ANY, FOR 2011 AND 2012 (Article 15):**

Because of their relatedness, I shall review and discuss Issues 1 and 2, Wages for 2011 and 2012 together.

Union Proposal – For 2011, the Union proposes a General wage increase of 3%. For 2012, the Union proposes an additional 3% General wage increase. The Union proposals for General wage increases would be effective or retroactive to the first full pay period in January of the respective year.

Employer/City Proposal – For 2011, the City proposes a General Wage increase of 0% or No Increase. For 2012, the City proposes a 1% General Wage Increase to be effective January 1, 2012 and an additional 1% General Wage Increase to be effective July 1, 2012.

## Ability to Pay

Employer Position: Following the national economic collapse of October, 2008, arbitrators recognized that the previous application of the “*ability to pay*” concept actually included considerations beyond simply whether an award would bankrupt the employer.

In Minnesota public sector jurisdictions, a first cousin to the “*ability-to-pay*” standard in interest arbitration is what may be christened the “*efficiency standard*” as referenced in Minn. Stat. 179A.16, Subd. 7; which states in relevant part:

*“the arbitrator...shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.”*

As Arbitrator Fogelberg noted in his award in Teamsters Local 320 and the Metropolitan Council Metro Transit Police Dept., BMS Case No. 09-PN-833 (June 28, 2010, Fogelberg):

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

*Unfortunately, that has changed.*

*One would have had to have been in a coma for the past few years in order to legitimately claim ignorance over the current economic condition. Not only in this state, but nation (if not world) wide. It is not necessary then to expound upon the eroding economy here. Suffice to say that the existing recessionary climate in which public employers operate today, and the relative hardships that this has caused and continues to cause, heightens the arbitrator’s consideration of the mandate of public employers to, ‘...efficiently manage and conduct their operations within the legal limitations surrounding the financing of (their) operations.’”*

The City is no longer a “Developing Community”, like its neighbors, Andover and Ramsey. Instead, it has become a mature community. The city’s population actually declined from 18,076 in 2000 to 17,142 in 2010 or a loss of 934 people, in a decade. Concurrently, the City’s population is aging, with the number of City households in the 55-74 bracket doubling in size while the number of households

with children has declined from 22% in 2000 to 19% in 2010. The City's rate of turnover in housing for owner-occupied homes is only about 1-3% per year, as the older residents choose to "age in place".

For tax purposes, over 40% of the City's single family homes are valued at less than \$120,000 and property tax values have been declining steadily, with home values estimated to decline by another 8% for 2013.

The City's demographics translate to a limited ability to raise taxes on the residents, particularly in light of the tenuous nature of the economy. 2013 will represent the fourth year in a row that the City has been able to hold its tax levy at a zero increase or has decreased the levy. During the period that the City has been trying to hold the tax levy rate steady or lower, it has been dealing with the problem of an aging infrastructure, i.e. the sewer/water system, the storm water system and streets/roads. As an example, City Manager Tim Cruikshank testified that the City has recently been addressing its deteriorating streets and roads on a neighborhood by neighborhood basis. In 2012 the City spent some \$2 million on street restoration projects. This is a fund balance cost that will continue to extend into the near future.

To date, the City has been able to effectively function through this difficult economic situation and its limited ability to raise taxes, by utilizing the profits from the municipal-owned electric utility. However, as Mr. Cruikshank noted, that situation will not continue into the immediate future, as the City will soon be required to contribute about \$7 million as part of an electric utility infrastructure project with Greater River Energy.

Since 2000, the City has reduced the size of its work force. That reduction in staff has saved about \$1 million in wage and benefit costs that would have come from the General Fund. Those savings allowed the City to pay for other general fund salary and benefits for the remaining employees during that period.

The Union argued that the City had a healthy fund balance in 2011 and 2012 and that any other economic problems should not be considered, because those are the relevant contract years at issue. The Union is ignoring the fact that any wage increase/payout for the two years at issue will also be required expenditures into the future. Accordingly, the City's current and future financial issues and situation become highly relevant. While the City's current General Fund balance is about 54%, Mr. Cruikshank testified that by the end of 2013, the City's fund balance will dip to 35-38% as the City continues to spend its current reserves for immediate operating needs. According to the State Auditor, the recommended minimum reserve balance should be not less than 35%.

Although the City has been careful with its limited resources, it has had the ability over the course of the past decade to utilize general fund revenue increases to absorb the greater wage and benefit costs for its employees. However, its tight

economic condition going forward will require the City to carefully manage its limited ability to raise revenue with its ongoing infrastructure needs. Placing the additional burden that the Union proposes is not consistent with the City and its citizens' best interest and will be contrary to the arbitration standard that requires an award which will allow the City to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these operations. Accordingly it is the City's position that this standard or factor strongly favors and supports the City's final wage positions.

Union Position: The Union recognizes that the current economic conditions for the state and the nation have, at times, been tumultuous and uncertain; however, when assessing the Ability to Pay, the Arbitrator must look specifically at the individual Employer.

When the Employer has more than adequate resources to pay the wage increases sought by the Union, the ability to pay is then one of the more important criteria used in setting wage rates. As stated in Elkouri and Elkouri, How Arbitration Works, 1429, 6<sup>th</sup> Ed. (2003):

*"The ability to pay criterion is of importance in the determination of wage rates and other contract benefits. This importance lies largely in the fact that, while an employer's ability to pay is not, in and of itself, a sufficient basis for a change in wages, it is a significant element properly to be taken into account in determining the weight to be attached to other criteria."*

The Union has shown that the cost of its 3% wage proposal for 2011 is \$41,112.66 and the cost of its 3% wage proposal for 2012 is \$41,316.03, for a Total Cost of \$81,428.69.

The Employer has not argued that it cannot pay for the Union's proposed wage increases. In fact, the Employer has used apropos remarks such as the "*budget numbers provided by the Union are accurate*" and fund balances "*need to remain flush*". Conventional wisdom dictates that if the fund balance needs to "remain flush", then it must already be "flush".

City Manager Cruikshank, during his testimony, said that the current fund balance reserve will decrease to as low as 38%, but offered no specific proof to support that statement.

The Union's combined wage proposals for 2011 and 2012 constitute less than 0.02% of the City's total budget for 2011 and less than 0.009% of the budgets for each specific year of wage consideration (2011 and 2012). Based on those figures, the financial impact of the Union's proposed wage increases on the City's budgets is relatively insignificant. A reallocation of 0.02% in a budget that includes a 54% reserve for operating revenues should be quite simple, especially since that is the worst case scenario, assuming no additional revenues are found or created.

With respect to unreserved fund balances held as “reserves” by municipalities, Arbitrator Richard Miller has noted that:

*“The [MN] State Auditor recommends that cities adopt fund balance policies that the amount of unreserved fund balances and special revenue funds, as of December 31, be approximately 35-50 percent of fund operating revenues, or no less than five months of operating expenditures. The city has...54.5%...this is far greater than the minimum of 35% recommended by the State Auditor.”* City of West St. Paul and Law Enforcement Labor Services, Inc., BMS Case No. 09-PN-1062 (Miller, 2010).

The record evidence clearly indicates that the Employer’s overall financial position is strong and sustainable and has more than sufficient funds and financial reserves to pay for the Union’s wage proposals. Additional indicators of the City’s strong financial position include; 1) its current Moody’s bond rating of “Aa2”, 2) the fact that the City was able to reduce its property tax levy in 2011 and hold it level for 2012, 3) the fact that the occupancy rate for the City’s business/industrial properties exceeds 90% and 4) that the City is looking at millions of dollars worth of commercial redevelopment and expansion over the course of the next couple of years; thereby potentially raising property tax revenues.

In view of the foregoing, there can be no question that the City does have the financial ability to pay the Union’s proposed wage increases for 2011 and 2012.

### STATUTORY CONSIDERATIONS

The Parties are in agreement that the only significant statutory consideration for the arbitrator in this matter is that of the *Minnesota Local Government Pay Equity Act* (MLGPEA or Pay Equity Act). Minn. Stat. §471.992, Subd. 2 (2011) states, *“In an interest arbitration involving a class, other than a balanced class,...the arbitrator shall consider the equitable relationship standards established by this section...together with other standards appropriate to interest arbitration.”*

The Parties acknowledge that the award of either the City’s or the Union’s wage increase proposals for 2011 and/or 2012 will not take the City out of compliance with the Pay Equity Act.

However, the City notes that the male-dominated Patrol Officer group, according to the most recent pay equity report, is already \$151.39 per month above predicted pay. If the Union’s wage proposals are awarded, the City also points out that its current Underpayment Ratio of 208.3 would plummet to 166.7 (but admittedly would still be in compliance with the Pay Equity Act).

Neither Party contends that there are any other legal or statutory issues to be considered in this matter.

### INTERNAL COMPARISONS

Employer Position: It is a generally accepted axiom in interest arbitration that where the employer has successfully negotiated wage increases with other bargaining units, the arbitrator's work is simplified. The arbitrator must accept these increases as indicative of the likely negotiation outcome or must offer a justification for any deviation. As one arbitrator has noted:

*"Where there is a well established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparables." Elkouri, How Arbitration Works, 5<sup>th</sup> Ed. at p. 112 quoting City of West Bend, 100 L.A. 1118, 1121 (Vernon, 1993).*

Also, as Arbitrator Richard Anderson noted in Ramsey County and LELS, 06-PN-0916 (August 21, 2006), that an internal consistency pattern was established where 92% of settled employees were operating under the same increase proposed by the County. Ramsey County at p. 14. Arbitrator Anderson further stated that,

*"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." Id.*

As outlined in the record, at all times material herein, the City has had approximately 144 employees. Of that number, approximately 76<sup>4</sup> or 53% are unrepresented by any labor organization. The remaining 68 employees, or 47%, are in contractual bargaining units as follows:

1. Sergeants (Police Dept) represented by LELS
2. Patrol Officers (Police Dept) represented by LELS
3. Firefighters (joint powers Fire Dept entity with City of Champlin) represented by Teamsters Union, Local No. 320
4. Streets and Parks employees represented by Teamsters Union, Local No. 320
5. Sewer and Water employees represented by Teamsters Union, Local No. 320
6. Electric Power Utility employees represented by Teamsters Union, Local No. 320

Of the 68 City employees, who are currently represented for purposes of collective bargaining, approximately 25 are represented by LELS and the

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<sup>4</sup> This group includes managers and supervisors.

remaining 43 employees are in bargaining units represented by Teamsters Union, Local No. 320.

At this point in time, the City has reached full contract agreements, including wages for 2011 and 2012, with both LELS and Teamsters Local No. 320 for all bargaining units, except the Patrol Officer unit represented by LELS. All of the settled contracts provide for a 0% general wage increase for 2011 and for a general wage increase of 1% effective 1/1/2012 and another 1% increase effective 7/1/12. These are the exact same general wage increase proposals, for 2011 and 2012, which have been declined by LELS for the Patrol Officer bargaining unit (even though LELS had previously accepted those proposals for the Sergeants unit).

All of the City's unrepresented employees have concurrently received the exact same General Wage Increases, if any, for 2011 and 2012 as those employees in the bargaining units with settled labor agreements.

In this situation, Internal Equity has, in the past, been given significant weight because the City and its bargaining units have historically and quite consistently negotiated (and arbitrated) the same general wage increases. With few exceptions, there has been a clearly established pattern of settlements among the organized and non-organized employees that have been adhered to by past arbitrators.

In the hearing, the Union pointed out what it contended was a single deviation from the current general wage increase pattern for 2011 and 2012. The Union pointed out that the City Manager, Mr. Cruikshank, received a "wage adjustment" in 2011 and that this demonstrated a "break" in the wage increase pattern for all City employees that has been in existence since at least 1999. City Human Resources Director, Deb Erar testified that the wage change for Mr. Cruikshank in 2011 was due to advice from the City's insurance consultant to the effect that the City should lower/reduce its contribution to the City Manager's health insurance program. In accord with the consultant's recommendation, the City did subsequently reduce its contribution to City Manager's health insurance. In order to compensate him for the dollar loss of the City's insurance contribution, his wage was adjusted to restore the lost contribution as wages. The result was that Cruikshank realized no net gain in compensation, but merely received as wages, the monies that the City had previously paid as premiums for his health insurance. Mr. Cruikshank has received the exact same general wage increase package for 2011 and 2012 as all the other City employees, as previously noted. Accordingly the changes resulted in a cost neutral rearrangement of the City Manager's wage and benefit package for 2011 and does not represent a "break" in the City's longstanding practice of providing the same general wage adjustments to all employees.

Accordingly, the Internal Equity factor strongly favors the City's final proposal.

Union Position: The City is arguing that, in view of the fact that each of the City's other five (5) bargaining units have already settled on the same general wage increases it is proposing for the Patrol Officer unit for 2011 and 2012, therefore, the Arbitrator must award the Union the same increases. As noted by Arbitrator Fogelberg in County of Anoka and Law Enforcement Labor Services, Inc., BMS 07-PN-1013 (Fogelberg, 2007), “[T]o render an award for wages based solely upon internal settlement patterns without the application of other comparables, would be a disservice to the parties and, at its extreme, could effectively eliminate the need to bargain over the subject at all.”

With respect to the City's contention that an actual “pattern” exists with respect to general wage increases for 2011 and 2012, the record evidence demonstrates that the City, in fact, broken its alleged pattern. The City acknowledged that in 2011, it increased the wage compensation of Mr. Cruikshank, the City Manager, by more than \$10,000 or about 9.76%. This was at the same time that all other City employees received no wage increase. The Employer testified that the increase in the 2011 wages of the City Manager were offset by the elimination of City contributions to the Manager's health insurance benefit program and was, therefore, a “zero sum change”<sup>5</sup> According to the testimony, the insurance benefit cash out was a proactive move triggered by the *ObamaCare* legislation. This so-called preemptive move is clearly ahead of the curve because the taxable provisions of *ObamaCare* have not yet been implemented and there is some question as to whether that program will ever be fully implemented. In any case, Mr. Cruikshank's insurance benefit was not yet taxable in 2011.

It should also be noted that while Mr. Cruikshank was afforded the opportunity to cash out of his health insurance benefit program; there is no evidence that any other City employees were given a similar option or opportunity.

If such unambiguous changes or exceptions to the *internal pattern* are not given weight by the Arbitrator, such as is the case with Mr. Cruikshank, then it is the same as saying that the Employer's position is a distinction without a difference.

In view of the obvious lack of Internal Equity between the City's wage treatment of it City Manager and its treatment of the remainder of its employees, the Union's proposed general wage increases for 2011 and 2012 are both reasonable and warranted.

### EXTERNAL COMPARISONS

Employer Position: As the Arbitrator quickly recognized in the hearing, the major dispute between the City and the Union centers on External Comparisons.

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<sup>5</sup> However, Ms. Erar also conceded that the City was paying PERA (Public Employee Retirement Association) benefits on those wages, thus negating her previous testimony.

The Union utilized the large 26 city comparable of what was formerly referred to as “Stanton Group 6” – named after the company that conducted the wage survey and compiled and calculated the data. The Stanton Group has not conducted any wage or salary surveys for a number of years. According to the Union’s materials as presented in the hearing, the City was 2.78% behind the average top wage for a Patrol Officer in 2010.

The City is using a narrower group of 11 other cities with a narrower focus on comparable populations.

In reviewing the each Party’s comparables, the nature of the dispute is quite clear. Essentially, by including all of the cities that formerly comprised Group 6, the Union is including a number of cities that should no longer be viewed as ‘comparable” to the City of Anoka. From the City’s perspective, the major problem with the continuing use of the former Stanton Group 6 is that the differences in populations and taxing ability of the cities in that group have become much more disparate and, therefore, it is no longer a truly comparable group.

The former Stanton Group 6 was originally formulated to include suburban cities with populations between 10,000 and 25,000. The City of Savage MN remains on the Union’s list, but as of 2010 had a population of 26,911 and should no longer qualify for inclusion in Group 6. Also, the City of Anoka is now a city with a declining population (17,142 in 2010) whereas many of the cities remaining on the list are growing rapidly, e.g. Champlin has grown to 23,089; Ramsey has grown to 23,668; Chaska is now 23,770; Crystal is now 22,151 and Farmington is at 21,086.

In performing an External Market Review, the Arbitrator should note that such a “review” does not (and should not purport to) to give a precise measure. Because of multiple year contracts or other factors such as market rate adjustments, there may be a significant variation in actual wages/salaries paid in other jurisdictions in any given year. For example, where an external market city enters into a three-year labor agreement that is “front-loaded” or “back-loaded”, that comparable may differ significantly from year-to-year depending upon whether the focus is on a year in which there is a greater or lesser percentage applicable. Accordingly, precise market measures cannot be accurately stated – particularly for any specific period of time.

It is also important to note that external comparables should be used by an arbitrator as a historical marker rather than a mechanism to improve market position. The City respectfully submits that interest arbitration is not an appropriate tool to advance market position over comparable cities. As Arbitrator

Bognanno noted in his 1999 interest arbitration award involving Anoka County and LELS<sup>6</sup>;

*“The Union’s arguments for a larger 1999 wage increase and for augmented longevity steps rely almost entirely on bringing the County deputies’ pay up to the average of the relevant cohort. Implicit in this argument is that the undersigned change the order in which comparison cohort counties are ranked in terms of pay, moving Anoka County up in the ranking. However, without specific reasons to support a restructuring of this nature, there is no justification for supporting the Union’s proposal.”*

This is particularly true in the present case where the issues are limited to 2011 – a year that has already passed and 2012 – a year that will be almost complete by the conclusion of this proceeding. This narrow consideration does not permit effective review or opportunity to address any deficiencies that may exist.

Regardless of the outcome of the debate between the City and the Union with respect to External Comparisons, this factor has traditionally received a lesser consideration in negotiations between the City and its unions. Arbitrator Richard J. Miller, in his Award in City of Anoka and LELS<sup>7</sup> for this same group back in 2004-2005, noted that, *“Clearly, there has been an established pattern of settlements among the organized and non-organized employees, with few notable exceptions...This internal pay practice strongly suggests that ‘market’ considerations were not the paramount considerations of the Parties with regard to establishing general wage increases for Police Officers.”*

Accordingly, where the goal of the arbitrator is to determine what the Parties, as reasonable persons, would have eventually agreed upon had their negotiations proceeded to a successful conclusion, this historical precedent of discounting external considerations should be recognized and acknowledged. This is particularly true as the City continues to become less similar to other fast growing cities in the former Stanton Group 6.

Union’s Position: Arbitral precedent clearly acknowledges that External Comparison is one of the factors to be reviewed and assessed in any interest proceeding.

In this instance, as demonstrated in the hearing, the external comparables clearly show the wage disparity for this bargaining group of Patrol Officers. Using the 26 comparable cities that were formerly included in what was known as the “Stanton Group 6”<sup>8</sup> with updated wage and salary data compiled by the Union, the data shows that;

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<sup>6</sup> Anoka County and LELS, BMS Case No. 99-PN-919 (Bognanno, 1999) at page 11.

<sup>7</sup> BMS Case No. 04-PN-1321 (Miller, 2005), page 13.

<sup>8</sup> The Stanton Group ceased gathering and compiling wage/salary data and publishing formal reports a number of years ago. Prior to that cessation, the City and the Union generally used the Stanton Group 6 data for external market comparison purposes for the Patrol Officer unit.

- In 2010 the City's Patrol Officers were 2.78% below the average Top Pay among the 26 cities, compared to 1.88% below the average for 2009.
- According to the data, in 2011 the Officers, based on the Employer's proposed "0%" wage proposal, fall to 3.92% below the average.
- For 2012, assuming adoption of the City's proposed general wage increases, the Patrol Officers Top Pay will be 4.33% below the average for the 26 cities in Group 6.
- Adoption of the Union's wage proposals – 3% for 2011 and 3% in 2012 – will leave the Patrol Officers still 1.04% below the average for 2011 and 0.50% below the average for 2012.

The negative trend in the City's position (below average), relative to Top Pay for Patrol Officers in Group 6 began in 2007, but has reached new depths in 2011 and 2012. The City's current position on wage increases and its rigid wage pattern would seemingly never correct the downward spiral from the average for the members of this LELS bargaining unit. If the City's wage pattern is impervious, current and future wages are likely to plummet even further below the market average.

Another external comparison factor supporting the Union's wage proposal lies in the external comparable rankings. Even if the Union's wage proposal for 2011 and 2012 is awarded, the Patrol Officers pay will remain below the average for Group 6, but most of the past deficits would be erased.

The City's own brief in this matter supports the Union's wage position. It states, *"Where there is well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparables."*

The wages currently being paid to the City's Patrol Officers are at an unacceptable level and below the market average.

Looking again at the Group 6 wage/salary data it shows that;

- The average wage increase in 2010 for the 26 cities in the Group was 0.92%, compared to the "0%" increase for the City.
- In 2011, the average wage increase for the Group 6 cities was 1.19%, while the City is again proposing "0%".
- Thus far in 2012, the average wage increase in Group 6 is 1.70%, while the City is offering a 2% split.

These figures, again, demonstrate that the City's wage offer will result in below average wages for its Patrol Officers, when compared to the external market.

With respect to the City's 54% unreserved fund balance, in the hearing the Union noted that Arbitrator George Latimer, in City of Little Falls, BMS Case No. 10-PN-

1606 (Latimer, 2010), found justification for a 0% wage increase based on the fact that the city's unreserved fund balance was only 16% and that the city had instituted severe cost-cutting measures to cope with an obviously strained budget. Those measures included not replacing the retiring city administrator, closing a park maintenance building and moving the employees to save utility costs and reducing the salaries of city council members.

The external comparisons to the City of Little Falls situation are stark when contrasted with the City of Anoka's current financial position. The City has a 54% unreserved fund balance, far in excess of the State Auditor's guidelines. Additionally, the City concedes that it also has funds available from its electric utility enterprise which can be and have been used to fund the operating budget.

Also, the City has never given its employees directives to save money on utility bills or other gritty cost saving measures. Moreover, the City is in such good financial condition that it can afford to buy property and sell it for a loss. Anoka Mayor Phil Rice has stated that, "*there are times when the city buys property knowing that it won't recoup all the costs.*"

As Arbitrator Latimer suggests that a low unreserved fund balance may justify a "0%" wage increase; it seems only reasonable to consider, at least in part, granting a wage increase when a high unreserved fund balance and other financial resources are as abundant as in this case.

Accordingly, the Union believes that External Market comparisons strongly support the adoption of the Union's wage increase proposal.

#### Other Economic and Market Forces

Employer Position: The City provided undisputed evidence that, in the last decade, no City police officer resigned his/her employment to accept a higher paying law enforcement officer (LEO) position elsewhere.

Additionally, it was pointed out that when a Patrol Officer job vacancy occurred in the Police Department in February, 2012, some 90 applicants quickly lined up for the job. Of those 90 applicants, some 70 were determined to have met the position's job qualifications. If the City's wage and benefit package were perceived to be "deficient" with respect to the labor marketplace, then one would expect incumbent employees to be "voting with their feet" and leaving for the greener pastures in significant numbers. Similarly, if the City's wage and benefit package was regarded in labor "marketplace" as substandard, uncompetitive and/or deficient, then there would be no long lines of applicants waiting to join the Department. Instead, the City would be compelled to engage in costly and time consuming recruitment efforts to find and bring in suitable applicants.

From the point of view of retention and recruitment, these items clearly favor the Employer's wage proposal.

Both the City and the Union presented Consumer Price Index (CPI) data. The Union presented CPI information for the period 2010 through August, 2012 for the Midwest Urban Area. The City presented data from 2006 through 2012, using the U S City Average for All Urban Consumers.

In reviewing the CPI factor, the amount of change in the Cost-of-Living has been traditionally used by the parties in Interest arbitration to support their respective wage proposals. However, because of the current significant volatility in today's economy, including wild swings in energy costs, this is now viewed as a lesser consideration and currently serves as a broad "check" to determine if an employee's overall wage increases have been sufficient to sustain the cost-of-living over time.

As the City pointed out in its hearing brief, the economic data all points to a significant change in the economy since the collapse of October, 2008. The 3.7% change in the CPI – All Urban Consumers, as of October, 2008 was subsequently replaced by a 1.1% change for the CPI in November, 2008 and 0.1% change in December, 2008. The significant decline in the CPI continued in 2009. This was historically significant in that it represented the first negative change to the CPI Urban All Consumers measurement since 1955. There was an initial cautious increase in the Index in December, 2009 through May, 2010, but the Index subsequently dropped significantly again. The increases in the Index noted during 2011 have been replaced by the 1.7% increases in May and June, 2012, with a further drop to 1.4% in July, 2012. August, 2012 did see a slight up tick to 1.7%. Overall, the 2012 tenuous increase during the first part of the year now appears to be trending toward an amount under 2.0% for the overall year.

Also, when viewing the CPI data, one should be aware that the CPI does include the highly inflationary health insurance premiums. Because the labor agreement for the unit does contain a separate contribution for health insurance each year, the CPI generally represents a greater inflationary amount than actually experienced by the members of the bargaining unit.

As presented in the hearing, the following data outline the wage increases received by the Patrol Officer unit compared to the CPI All Urban Consumers statistics for the years 2007 through 2011:

<u>Year</u>	<u>General Wage Increase</u>	<u>CPI-U</u>
2011	0.0%	3.2%
2010	0.0%	1.6%
2009	3.0%	-0.4%

2008	3.0%	3.8%
2007	<u>3.0%</u>	<u>2.8%</u>
Totals:	9.0%	11.0%

As these comparisons show, the members of the bargaining unit have been generally able to maintain their purchasing power when measured against inflation for the past five years; even when the highly inflationary health insurance premium element is elevating the CPI. The utilization of “splits” (1.0% increase on 1/1/12 and another 1.0% on 7/1/12), as the Employer proposes for 2012, improves the employee’s purchasing power from year to year as the “tail” associated with the greater increase carries over into future years.

The obvious aberrations in the CPI since 2008 prevent a detailed focus on this factor until additional time has passed. The fact that there isn’t, nor has been, any wage-related turnover in the Police Department and the significant applicant pool for the recent job opening, support the City’s final wage position.

Union Position: As presented in the hearing, a review of the Consumer Price Index for Urban Wage Earners and Clerical Workers in cities under 50,000 population in the Midwest Region, showed that inflation increased as follows:

<u>Year</u>	<u>Inflation Rate</u>
2012 (Aug)	2.4%
2011	3.7%
2010	<u>2.4%</u>
Total	8.5%

The above increases indicated by the CPI are obviously greater than the 0.0% wage increase allocated to the bargaining unit in 2010 or the 0.0% increase proposal by the City for 2011. The City’s wage proposal for 2012 of 1.0% on 1/1/12 and another 1.0% effective 7/1/12 hardly makes a dent in the slippage in buying power that the employees have experienced in the course of the past 32 months or so.

The Union’s proposed wage increases of 3.0% for 2011 and another 3.0% for 2012 are needed to fully arrest the decline in purchasing power and standard of living that employees are currently experiencing.

The Union has also presented evidence indicating that financial analysts and forecasters are becoming increasingly optimistic about the state of the nation’s economy and point to the fact that private sector are starting to rise again.

The MN State Budget forecast recently showed that the current 2012-2013 biennium may conclude with as much as an \$876 million surplus. Such a surplus will, by law, be automatically transferred to the state’s reserve funds.

Finally, as noted previously, the City has already cut taxes for 2013 (and for the last four years) despite ongoing cuts by the State to Local Government Aid (LGA). If the City were, in fact, in a financial “free-fall” or in need of a bailout, cutting taxes would be analogous to committing political suicide – death by financial asphyxia. However, there is every indication that the City is not on financial life support and is actually financially stable and well positioned to meet all statutory obligations, while still growing its reserve funds.

In summary, the Union’s wage increase proposals should be awarded based on the reality of the economic conditions of all the parties involved, including LELS members, not just the alleged economic condition of the City/Employer.

### **Award – General Wage Increases for 2011 and 2012**

**Issue No. 1 – General Wage Increase, if any, for 2011.** The Employer’s position of 0.0% is awarded.

**Issue No. 2 – General Wage Increase, if any, for 2012.** The Employer’s proposal of a 1.0% wage increase effective 1/1/12 and an additional 1.0% wage increase effective 7/1/12 is awarded. The scheduled wage increases shall be retroactive to their respective effective dates.

#### **Discussion and Rationale:**

- **Ability to Pay** – This factor is merely intended to indicate if, in fact, the Employer is financially able to pay the costs associated with competing wage proposals. This factor indicates whether or not the employer can pay, but does not address the question of whether the Employer should pay.

Based up the record testimony and evidence, it is clear that the City currently has the financial resources available to pay for either it’s or the Union’s general wage increase proposals, without placing the City’s financial or fiscal systems at risk.

- **Statutory Considerations:** Based on the record evidence and testimony, the City is in compliance with the requirements of the MLGPEA and will still be in compliance, regardless of which wage increase proposal is adopted. There are no other statutory or legal constraints that would bar the award of either Party’s general wage increase proposals.
- **Internal Comparisons:** An examination of the Internal Equity factor in this matter strongly argues for the City’s wage increase proposal. The wage increase history, for both the organized and unrepresented employees, shows a consistent pattern of equity between the two groups dating back

to at least 1999. The patterns have not, however, been totally rigid. The relevant parties have occasionally made wage adjustments or corrections when the evidence indicated that action was necessary, e.g. 2003 when the City made an adjustment in shift differential pay for the Patrol Officers and in 2004 when a wage adjustment was made for the public works unit. I further note that over the years other arbitrators, involved in similar Interest proceedings involving the City, have overwhelmingly recognized and adhered to a reasonable and rational pattern of internal equity.

With respect to the specific wage proposals for 2011 and 2012 for the Patrol Officer unit, it weighs strongly that the four (4) bargaining units represented by Teamsters Union, Local No. 320 and the Sergeants unit represented by LELS have all previously agreed upon the General Wage Increase proposal for 2011 and 2012, currently proposed by the City for the remaining Patrol Officer unit.

With the wage increase situation for 2011 and 2012 already settled for approximately 93% of the City's workforce – including the LELS Sergeants unit – the Union has a very difficult task in trying to justify a significantly larger wage increase for the Patrol Officer unit. The Union has failed to demonstrate that the Patrol Officers, under the City's wage proposal, would end up being inequitably compensated with respect to their City co-workers. Assuming, *arguendo*, that those Officers were, in fact, awarded the 6% increase proposed by the Union; I have no doubt that the City's other 120+ workers would immediately cry "foul" and/or "unfair" and there would be immediate dissension and adverse morale effects among the members of the City's workforce.<sup>9</sup>

With respect to the Union's contention that the health insurance adjustment made to the City Manager's compensation indicates a significant "departure" from the 2011-2012 wage increase pattern; I find that argument be without merit.

- External Comparisons: In reviewing the contending views of the City and the Union with respect to what cities should currently be regarded as valid comparison objects, I find that neither list is particularly elucidating or educational. The Union's comparison list obviously shows that the Patrol Officers are paid below average for that comparison group, while the Employer's list shows that they are at the average for that comparison group.

Frankly, where an employer wants to be with respect to employee compensation, relative to its competitors and other comparison entities, is typically an organizational policy question involving a multitude of

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<sup>9</sup> As in, "Ha Ha, we got a bigger piece of the cake than you suckers!"

considerations; subject to discussion and adjustments in relevant bargaining situations.

From a cold, hard labor economics perspective, no employer wants to be at the bottom of its list of competitors and other comparison objects or entities with respect to wages for any significant period of time. The penalties can be very costly in terms of retention and recruitment of a qualified workforce. Fortunately, the City isn't yet close to finding itself in that position – given its current positive retention and recruitment situations.

As the City points out, it is trying to maintain a financially stable community through repair and upgrading of its infrastructure, while trying to provide some measure of fiscal stability/relief to its property taxpayers, who are watching the value of their property continue to decline. Concurrently, the City says it is trying to maintain pay equity for its workforce, but obviously it can't meet all their expectations or demands, in the context of an uncertain and volatile economy.

With unemployment still at about 8% and the “real” unemployment rate probably double that; with many states and other public bodies trying to cope with budget deficits; with the Nation coping with a lackluster “recovery” while facing an imminent “fiscal cliff” and the general world economic situation questionable, it is not surprising that various bodies, like families, are being fiscally conservative and frugal. Are we in a “new economic/fiscal normal” where the watchword is “austerity”. Are Greece and Spain poster children for our future?

- Other Economic and Market Forces: I agree with the Union that according to the CPI data, there has, indeed, been some slippage over the past several years with respect to wages relative to inflation. This is true not only for the Patrol Officers, but also for the rest of the City's employees. More broadly, it is also true for most of the rest of the Nation's workforce. A recent factoid indicated that over the course of past years, the income status of the typical family has declined by some \$4,000.

Accordingly, the Patrol Officers are definitely not alone in that respect and, therefore, share the pain with all the rest of us. Unfortunately, from an equity point of view and in this context, they are currently no more entitled to relief from that burden than any other City employee.

Fortunately, while there has been some slippage, the current amount is relatively minor in the context of the overall compensation situation.

Accordingly, for me to award the Union's general wage increase proposal to the Patrol Officer unit, solely on the basis of the CPI picture, would be irresponsible.

Conclusion: After considering and weighing all the specific factors, as above, the arbitrator is faced with the final question, "What would have been the final agreed upon resolution of the wage question, if the parties had successfully bargained to an agreement?"

I have absolutely no doubt or reservation that, ultimately, the Parties would have agreed to the City's wage proposals. Even assuming, *arguendo*, that the Parties possessed a full arsenal of bargaining weapons, I cannot visualize the Union prevailing. Given the current state of the labor market, the Union really can't effectively utilize its strike weapon, but the Employer could and likely would use the very viable threat of a lockout and the hiring of temporary replacement employees (of which there are an abundance) to enforce its bargaining position. Of course, when the dust finally settled on such a situation, there would be no "winners", only "losers", on both sides.

**ISSUES NOS. 3 AND 4: SHIFT ROTATION PAY – ADJUSTMENT, IF ANY, FOR 2011 AND 2012 – ARTICLE 15:**

As was the case with the General Wage Increase Issues for 2011 and 2012; because of their related nature, I shall review both of these Issues concurrently.

Union Position: Shift Rotation Pay affects all Police Department employees because everyone is required to rotate shifts periodically (the only exception is Investigators).

Patrol Officers in the bargaining unit must bid and rotate one shift per year for a three-month period. The Union previously requested the identical language for shift rotation pay for the Sergeants unit and the City accepted that language as part of the current Sergeants labor agreement.

In 2010, the Union negotiated shift rotation pay into the Patrol Officer unit contract, but with a "sunset" provision that specified that the shift rotation pay clause would expire on "...December 31, 2010".

Shift rotation pay recognizes that employees are required to work undesirable hours and shifts. Once considered "*inconvenience pay*", there is now ample evidence to show that working night shifts can create serious health risks. One article compared late night workers to "...*working in a state of debilitating jetlag.*" Other sources indicate that shift work negatively impacts the body and cause metabolic disorders.

Aside from the inherent health risks identified by researchers; when working the B and C shifts, the patrol officers are working side-by-side with their sergeant counterparts – but unlike the sergeants, they are not receiving shift rotation pay. The accumulative effect has the sergeants getting ever higher pay and premium shift rotation pay, while at the same time the patrol officers are paid less and work without the \$15.00 shift rotation pay.

During the hearing, the City compared the Union's request for shift rotation pay as essentially a "Christmas list". It implied that the sergeants were the standard setters and the Union would need a *quid pro quo* to secure shift rotation pay. The quip regarding a Union Christmas list is incredulous. The Union just negotiated a structural change in single health care coverage with the Employer for 2012. The insurance coverage was previously paid at 100% by the City. Under the new agreement, the City's contribution is now capped at a specific dollar amount. The City obviously placed a high value on the insurance language that it sought from the Union; therefore, a *quid-pro-quo* does exist in the form of the Union's concession on the reduced health insurance premium benefit. In fact, this same reduction in health insurance also supports the Union's position to increase the shift rotation pay in 2012, if awarded.

Employer Position: Before we proceed into a detailed discussion of Issues 3 and 4, let's review the details of the Parties' respective proposals:

For background, the following is the contract language regarding shift rotation pay for patrol officers from the 2010 labor agreement:

*"ARTICLE 15 SALARIES. Section 15.4, Shift Differential: Employees scheduled to work B and C shifts will be paid \$15.00 per pay period. Effective January 1, 2010 with a sunset of December 31, 2010."*  
[emphasis added]

The Union is currently proposing to add language to the 2011-2012 labor agreement creating a shift rotation benefit of \$15 per pay period for employees scheduled to work on a 6-3 shift rotation in 2011. The language would continue in effect for 2012, except the benefit would increase to \$25 per pay period.

The City is not proposing any new language in the union contract on the issue of shift rotation pay.

With respect to "language awards", this arbitrator has previously noted that he adheres to the arbitral interest principle and standard that a party proposing to add to or change existing contract language shall bear the burden of proof in demonstrating that there is a definite problem and that its proposed change will effectively and reasonably resolve the problem, e.g. the proposal is necessary

and reasonable. See Anoka County and LELS, BMS Case No. 07-PN-0910 (Kapsch, 2008), page 20.

As noted, the current labor agreement does not contain any continuing shift rotation pay provision.

The Union indicated that it was requesting the same benefit for the patrol officer unit, which was in place for the sergeants unit in 2011. Furthermore, the Union is proposing that the shift rotation pay be increased to \$25 per pay period for 2012. The Union argues and presented evidence suggesting that shift work is unhealthy.

The City pointed out that the Union is simply asking for money. It is not identifying a problem and asking for language to fix the problem. Given that an award on these two Issues covers both 2011 and 2012, the contract term will be almost over by the time the monetary issue is resolved. Basically, the Union is seeking a lump sum end-of-contract wage payment and an additional wage obligation going forward.

As Deb Erar, the Human Resources Director testified, the shift pay provision in the sergeants unit agreement is a longstanding provision that was in place prior to her becoming HR Director. The Sergeants unit obtained this benefit through the give and take of contract negotiations long ago. With respect to the Union's current proposal, interest arbitration should not be a mechanism for any particular group to simply match any benefit that is more desirable in another labor agreement. To do so would elevate arbitration, above negotiation, as the preferred route for change.

As indicated by the 2010 contract language, the parties specifically negotiated the shift rotation pay provision as a Limited Term Benefit. The parties specifically negotiated this benefit to provide that it expired on December 31, 2010. During the hearing, the Union acknowledged that the Patrol Officers did previously have Shift rotation pay in their contract, but it was negotiated out in 2003 and wasn't negotiated back into the contract until the 2010 agreement.

Interest arbitration should not be used as a substitute for Santa Claus. Simply putting together a long wish list and seeing if an arbitrator will grant something is not an appropriate standard for interest arbitration. New contractual concepts are generally not favored in interest arbitration and it is a basic tenet of labor law that "*the best labor – management contracts are those that are negotiated through collective bargaining without outside assistance*". See Elkouri & Elkouri, How Arbitration Works, 6<sup>th</sup> Ed. (2003) at p. 1348

If the Union truly wishes to obtain this shift rotation pay benefit for the Patrol Officer unit, it should follow the Sergeants unit and seek it through the give and

take of contract negotiations, which will soon be starting for the 2013-2014 contract.

Accordingly, The City respectfully requests that the Union proposals for Issues Nos. 3 and 4 be denied and the City's position on both Issues be awarded.

**AWARD, ISSUES NOS. 3 AND 4: SHFT DIFFERENTIAL PAY –  
ADJUSTMENT, IF ANY, FOR 2011 AND 2012.**

**Issue No. 3 and Issue No. 4:** The City's position of no shift rotation pay language for 2011 and 2012 is awarded. Concurrently, the Union's proposal for the addition of language to Article 15 providing for shift rotation pay for 2011 and 2012 is hereby denied.

Discussion and rationale: The Union admits that the Patrol Officers unit did previously have shift rotation pay as a part of the contract until about 2003, when it was negotiated out.

Subsequently, the Patrol Officers had no shift rotation pay until the 2010 contract when the Parties agreed upon the language in Section 15.4. As noted previously, the Parties also agreed in Section 15.4 that the provision for shift rotation pay would "sunset" on December 31, 2010.

Given the specific language of Section 15.4, I find that Section, by its terms, expired on 12/31/10. Therefore, the Union is unilaterally asking me to reinsert or add the shift rotation pay provision back into the 2011-2012 labor agreement.

Like the City, I'm sure that the Union is also aware that, as a labor arbitrator, I don't make it a habit to routinely add or change contract language in the context of Interest arbitration.

I am uncomfortable with the fact that neither the City nor the Union offered any insight as to what motivated them to "sunset" their 2010 shift rotation pay agreement.

The Union argues that I should step in and remedy the lack of shift rotation pay in the 2011-2012 contract because of the following "problems":

1. Employees, by nature, don't like shift work and there is now evidence indicating that shift work may also create health risks.
2. The Sergeant's unit has shift rotation pay in their labor agreement and the Patrol Officers, who work shifts, are uncomfortable with the fact that the Sergeants receive shift pay and they don't.

In answer to 1. above, Frankly, I really don't see how putting \$15 or \$25 more in pay envelopes of the Patrol Officers, at this point in time, will specifically prevent, treat or cure any of the alleged health problems caused by shift work.

In answer to 2. above, I note that the Sergeants unit has had shift rotation pay in their contract for quite some time and I further note that it was negotiated into the contract, not obtained through Interest arbitration.

Accordingly, I find no rational basis or urgent justification for the Union's noted "problems" with respect to the shift differential pay issue that currently warrants an arbitral solution or remedy. I note that the negotiations for the 2013-2014 labor agreement are rapidly approaching.

Dated at Minneapolis, Minnesota this 5th day of November, 2012.

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/s/Frank E. Kapsch, Jr., Arbitrator

Note: I shall retain jurisdiction in this matter for a period of 30 calendar days from the date of this Decision and Award to deal with any related questions or problems.