

IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR)	MINNESOTA BUREAU OF
SERVICES, INC.,)	MEDIATION SERVICES
LOCAL 77,)	CASE NO. 12-PN-0656
)	
)	
Union,)	
)	
and)	
)	
THE CITY OF NEW HOPE,)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

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For the Employer:

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On October 19, 2012, in New Hope, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act to resolve collective bargaining issues about which the parties are at impasse. Post-hearing written argument from each of the parties was received by the arbitrator on November 6, 2012.

BACKGROUND

The City of New Hope (sometimes, the "Employer" or the "City") is a northwestern suburb of Minneapolis, Minnesota. The census of 2010 determined that the population of the City was 20,339.

The Union is the collective bargaining representative of licensed police employees of the City in two bargaining units, one of which the parties refer to as the "Police Supervisors' Unit" and the other, as the "Patrol Unit." In this proceeding, which relates to the Patrol Unit, the parties seek to resolve collective bargaining issues about which they have bargained to an impasse. Hereafter, unless otherwise stated, I refer to the Union in its status as the collective bargaining representative of the Patrol Unit. The Patrol Unit consists of twenty-three full-time Patrol Officers, some of whom may serve as Detectives, as Canine Officers, as School Liaison Officers or as Drug Task Force Officers.

The Union and the Employer are parties to a labor agreement that states the terms and conditions of employment of employees in the Patrol Unit. That agreement has a stated duration from January 1, 2009, through December 31, 2010. Though, by its stated duration, the agreement has expired, the parties continue to operate under its terms. Accordingly, I may sometimes refer to it as the "2009-2010 labor agreement" or as the "current labor agreement."

The parties have successfully negotiated some of the terms of a new labor agreement, which will succeed the 2009-2010 labor agreement. They have agreed that the duration of the new

agreement will cover three calendar years -- from January 1, 2011, through December 31, 2013. They have, however, reached impasse in their bargaining about several bargaining issues, described below, and, as noted above, they seek to resolve those issues in this arbitration proceeding.

On June 18, 2012, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to seven collective bargaining issues that are to be resolved in this arbitration proceeding. In listing these issues below, I refer to them by the following titles, and I have revised the order in which they were listed in the Certification of Impasse:

- Issue 1. Wage Rates for 2011, 2012 and 2013.
- Issue 2. Temporary Supervisors' Pay.
- Issue 3. Personal Leave -- Participation
In Personal Leave For
Current/New Hire Employees.
- Issue 4. Revision of Memorandum of Understanding
Regarding Eligibility For Insurance
Contribution Remainder.
- Issue 5. Personal Leave -- Eligibility
For Insurance Contribution
Remainder.
- Issue 6. Holiday Pay.
- Issue 7. Shift Differential.

ISSUE 1: WAGE RATES FOR 2011, 2012 AND 2013

The current labor agreement establishes pay rates for Patrol Officers through a wage schedule set out in Appendix A. The wage schedule establishes a starting monthly wage rate and four step increases -- after employment for six months, for twelve months, for twenty-four months and for thirty-six months. In addition, the wage schedule provides increases (hereafter, sometimes referred to as "longevity steps") after

employment for four years, for eight years, for twelve years and for sixteen years.

Wage rates now being paid to bargaining unit employees became effective on July 6, 2009. The current labor agreement allows reopening of bargaining for 2010 wages, and the parties did reopen bargaining for 2010 wages, agreeing 1) that 2010 wage rates would be the same as those set by the wage schedule to be effective on the July 6, 2009, 2) that employees would receive step advancement for 2010 and 3) that the City would not "furlough" any bargaining unit member during 2010. Thus, the wages now being paid to bargaining unit members are the following -- established by the July 6, 2009, wage schedule:

	<u>Month</u>	<u>Annual</u>
Start	\$3,484.96	\$41,819.47
6 Months	3,753.03	45,036.35
12 Months	4,289.18	51,470.11
24 Months	4,825.32	57,903.88
36 Months	5,361.47	64,337.64
4 Years -- 3%	5,522.31	66,267.77
8 Years -- 5%	5,629.54	67,554.52
12 Years -- 7%	5,736.77	68,841.27
16 Years -- 9%	5,844.00	70,128.03

Employees classified or assigned by the Employer to the following job classification or position will receive \$250.00 per month or \$250.00 pro-rated for less than a full month in addition to their regular wage rate: Investigator (Detective), Canine Officer, School Liaison Officer, Drug Task Force Officer.

The Union's Position.

For 2011, the Union proposes that the wage rates specified at each step on the wage schedule, including longevity steps, be increased by 2.5%. For 2012, the Union proposes that the wage rates thus established for 2011, be increased by an additional

2.5%. For 2013, the Union proposes that the wage rates thus established for 2012, be increased by an additional 2.5%.

The Union proposes no change in the \$250.00 per month premium paid to Investigators, Canine Officers, School Liaison Officers and Drug Task Force Officers, though, as I note below in my discussion of Issue 2, the Union has proposed that a Patrol Officer temporarily appointed to be an Acting Sergeant also receive this \$250.00 per month premium.

The Employer's Position.

For 2011, the Employer proposes that the wage rates specified at each step on the wage schedule, including longevity steps, be increased by 1.0%. For 2012, the Employer proposes that the wage rates thus established for 2011, be increased by an additional 1.0%. For 2013, the Employer proposes that the wage rates thus established for 2012, be increased by an additional 1.0%. The Employer proposes no change in the \$250.00 per month premium paid to Investigators, Canine Officers, School Liaison Officers and Drug Task Force Officers.

The position of each party includes step advancement in each year of the new labor agreement's duration.

Decision and Award.

The parties have presented evidence and argument relating to the following subjects:

- The cost of proposed wages.
- Economic conditions and the City's "Ability to Pay."
- Internal comparison -- information about the wages paid by the City to its other employees.

External comparison -- information about wages
paid to Patrol Officers by other cities.
Inflation.
Retention of Personnel.

Cost. The parties' estimates of the increased cost of their positions are approximate. The Union's estimate is based on the assumption that all twenty-three members of the bargaining unit are at the top (thirty-six month) step, i.e., excluding longevity steps, annual step advancement, and roll-up costs (the Employer's share of FICA and PERA contributions). Thus calculated, the Union estimates the cost of increasing wage rates by 2.5% per year would be \$113,781.

Dividing the Union's cost estimate by 2.5 gives an approximation of the cost of a wage-rate increase of 1% per year, as the Employer proposes (again, excluding longevity steps, annual step advancement and roll-up costs. The Employer notes that, using the current wage schedule, the provision of step increases for 2011, 2012 and 2013, as it proposes, will add \$95,372 to its cost (including roll-ups on this amount). This amount does not include the increased cost of its proposal to raise wage rates by 1% per year. In considering the cost of step advancement, I note that eventually employee turnover will ameliorate such costs, as personnel age and are replaced by newly hired employees at the bottom of the wage schedule.

Economic conditions. The Employer makes the following arguments. Since 2008, economic conditions in Minnesota and in the City have been severely stressed, with a substantial adverse effect on the City's revenue that is still continuing. Since 2006, the City has lost about \$700,000 in aid provided by

the State of Minnesota -- an amount that directly impacts the City's operations. Concurrently, home values have dropped, home foreclosures have risen, and, since 2009, the City's tax capacity has declined by \$3.4 million. The loss of tax capacity limits the ability of the City to generate revenue through levies on real property, the primary source of its revenues. The City has, nevertheless, had to increase its levy by about 15% since 2009, causing a substantial burden on homeowners and businesses. The City has cut expenditures by about \$863,000 over the past four years; some of that decline has resulted from a personnel reduction of 3.18 full-time equivalent positions.

The Union argues that the City's financial statements show a substantial net balance in assets. In addition, the Union argues that the City's General Fund shows a substantial balance that could be used to finance the wage increase proposed by the Union.

Internal Comparison. At the time of the hearing, the City employed ninety-three employees. Forty-six of them were not members of a union. Forty-seven of them were union members, in three bargaining units -- twenty-three Patrol Officers in the Union's Patrol Unit, six police supervisors in the Union's Police Supervisors' Unit, and eighteen Public Works employees, represented by Local 49 of the International Union of Operating Engineers ("IUOE").

In bargaining about the 2011-2013 labor agreement covering the Police Supervisors' Unit, the Employer and the Union agreed to increase wage rates by 1% per year in each of

the three contract years and provide step advancement in each year -- the same wage increase the Employer proposes for Patrol Officers in the present case.

The following is a description of the way in which wage rates for 2011, 2012 and 2013 were established for the Employer's other employees -- the forty-seven non-union employees and the eighteen employees represented by the IUOE. The Employer had contracted to have a Compensation Study done by Springstead Consultants. In 2012, the Employer began to implement the completed Compensation Study. For IUOE employees, it did so as part of its settlement of a new labor agreement covering 2011, 2012 and 2013. Under that IUOE settlement, wages were increased for 2011 by 1%, and employees received step advancement. For 2012 and 2013, the IUOE settlement provided for the implementation of the Compensation Study.

The wages of non-union employees were established in the same manner. They received a 1% increase and step advancement in 2011, and the Employer implemented the completed Compensation Study in 2012 and 2013. Implementation of the Compensation Study for IUOE employees and non-union employees in 2012 resulted in a slight reduction for some employees and, for about nine others, a substantial increase. For 2013, IUOE employees and non-union employees received 0% and received step advancement.

The Employer estimates that for 2011 through 2013, the total wage increase for IUOE employees and non-union employees will average 2.75% for single incumbent classifications and 2.88% for multiple incumbent classifications. The Employer

argues that its final position here, a 1% increase in each of the three contract years, totaling 3%, is greater than what the IUOE and non-union employees received for the same years.

The Employer argues that in the past it has generally adhered to internal consistency in setting wage rates of non-union employees and in bargaining about wages for the three bargaining units of employees with union representation. The Employer argues that there is no justification for a departure from that pattern of consistency in the present case.

The Employer urges that there is no justification for increasing Patrol Unit wages by 2.5% per year for 2011, 2012 and 2013, when the Police Supervisors' Unit settled for 1% per year for the same years. The Employer argues that an award of the Union's position would cause compression of wage rates in the City's Police Department, bringing the compensation of Patrol Officers inappropriately near to that of their supervisors.

The Union argues that it should not be required to accept what has been imposed on non-union employees or what other unions have negotiated for the bargaining units they represent. The Union urges that to require adherence to alleged pattern settlements would effectively negate its right to bargain collectively and its right to bargain separately in representing each of the bargaining units of police employees.

The Union also argues that implementation of the Compensation Study caused a substantial departure from any wage pattern, thus defeating the Employer's argument for internal consistency.

The Union notes that the Employer is in compliance with the Minnesota Pay Equity Act (the "Act"), which seeks to eliminate gender discrimination in establishing the compensation of employees. The Union presented evidence showing that an award of its position here would not cause the Employer to be out of compliance with the Act.

External Comparison. For external comparison, the parties propose the following twelve cities, all suburbs of Minneapolis and St. Paul, Minnesota (the "Metro Group"):

<u>City</u>	<u>2010 Population</u>	<u>City</u>	<u>2010 Population</u>
Brooklyn Center	30,104	New Brighton	21,456
Columbia Heights	19,496	Richfield	35,228
Crystal	22,151	Robbinsdale	13,953
Fridley	27,208	South St. Paul	20,160
Golden Valley	20,371	West St. Paul	19,540
Hopkins	17,591	White Bear Lake	23,790
<u>AVERAGE POPULATION</u>		<u>22,588</u>	
New Hope	20,339		

The evidence shows 1) that the tax capacity of the City is about 83.2% of the average of the twelve cities in the Metro Group, 2) that the City's revenue and expenditures over the past few years have ranged from about 77% to 83% of the average of the twelve cities in the Metro Group, and 3) that the per capita income of the City's residents is about 91% of the average of the twelve cities in the Metro Group.

The evidence shows the following comparisons of Patrol Officers' wage rates. Comparison of 2010 wage rates paid by the City and 2010 wage rates paid by the twelve cities in the Metro Group shows that at the top step, excluding longevity steps, the

City paid Patrol Officers 98.3% of the average paid by the cities in the Metro Group and that, at the top longevity step, the City paid Patrol Officers 99.7% of the average paid by the twelve cities in the Metro Group.

Comparison of the 2011 wage rates proposed by each of the parties to the 2011 wage rates paid by the twelve cities in the Metro Group shows the following. At the top step, excluding longevity steps, the City's position would pay Patrol Officers 97.7% of the average paid by the cities in the Metro Group, and, at the top longevity step, the City's position would pay Patrol Officers 99.8% of the average paid by the cities in the Metro Group.

At the top step, excluding longevity steps, the Union's position would pay Patrol Officers 99.2% of the average paid by the cities in the Metro Group, and, at the top longevity step, the Union's position would pay Patrol Officers 101.2% of the average paid by the cities in the Metro Group.

Comparison of the 2012 wage rates proposed by each of the parties to the 2012 wage rates paid by eight of the twelve cities in the Metro Group that had settled at the time of the hearing in this matter shows the following. At the top step, excluding longevity steps, the City's position would pay Patrol Officers 97.3% of the average paid by those eight cities in the Metro Group, and, at the top longevity step, the City's position would pay Patrol Officers 99.7% of the average paid by those eight cities in the Metro Group.

At the top step, excluding longevity steps, the Union's position would pay Patrol Officers 100.2% of the average paid by

those eight cities in the Metro Group, and, at the top longevity step, the Union's position would pay Patrol Officers 102.75% of the average paid by those eight cities in the Metro Group.

Comparison of the 2013 wage rates proposed by each of the parties to the 2013 wage rates paid by five of the twelve cities in the Metro Group that had settled at the time of the hearing in this matter shows the following. At the top step, excluding longevity steps, the City's position would pay Patrol Officers 95.0% of the average paid by those five cities in the Metro Group, and, at the top longevity step, the City's position would pay Patrol Officers 98.5% of the average paid by those five cities in the Metro Group.

At the top step, excluding longevity steps, the Union's position would pay Patrol Officers 99.3% of the average paid by those five cities in the Metro Group, and, at the top longevity step, the Union's position would pay Patrol Officers 103.0% of the average paid by those five cities in the Metro Group.

From 2010 to 2011, for the twelve cities in the Metro Group, the average Patrol Officer's wage rate increased by 1.56% at the top step excluding longevity steps and, if longevity steps are included, by 0.97%. The Employer notes that the average for 2011 was influenced upward because New Brighton made a one-time addition to wage rates as a buyout of other benefits.

From 2011 to 2012, for the eight cities in the Metro Group that had settled at the time of the hearing, the average Patrol Officer's wage rate increased by 1.30% at the top step excluding longevity steps and, if longevity steps are included, by 1.35%.

From 2012 to 2013, for the five cities in the Metro Group that had settled at the time of the hearing, the average Patrol Officer's wage rate increased by 2.06% at the top step excluding longevity steps and, if longevity steps are included, by 2.05%.

Inflation. The Union presented evidence that the rate of inflation as measured by the Consumer Price Index ("CPI") has risen, showing that the purchasing power provided by current wage rates has weakened. In 2011, the CPI rose by more than 3%, and from September of 2011 to September of 2012, it rose by about 2.1%. The Employer points out that, since 2001, the CPI has risen about 21.6% while wage rates for Patrol Officers have risen by 26.5% during that time.

Retention. The Employer argues that it has many long-term employees in the Patrol Officer's classification, thus implying that their compensation is competitive in the market.

Award.

For the following reasons, I award the position of the Employer. The evidence shows that the finances of the City are constrained, resulting not only from the loss of financial aid from the State, but from the City's poor tax capacity and the diminished ability of owners of homes and other real property to pay tax increases during years of economic stress. Though external comparison shows that the wages paid to Patrol Officers by the City are slightly below the average paid by the twelve cities in the Metro Group, the financial condition of the City, also ranked below average, is consistent with its ranking in this external comparison.

The Union has shown that the City has assets and a general fund balance that could be used to pay the wage increases it seeks -- even during the three years of the new contract's duration. I agree with the Employer, however, that balance sheet items, whether net assets or net fund balances, should not be used to justify expenditure for wages, which have an ongoing nature. Rather, that justification should come from the prospect of increased revenue.

The evidence relating to internal comparison shows that the Compensation Study resulted in a few positions receiving wage adjustments above the internal pattern of raising wages by about 1% per year. Those variations were few and were justified by the Study's evaluation of the work of those positions. The Employer's proposal here to increase wages of Patrol Officers by 1% per year, with step advancement, is consistent with the increases provided to other employees. In addition, the 1% per year settlement of the wage rates of those in the Police Supervisors' Unit reinforces the Employer's argument for internal consistency.

The Union showed that the rate of inflation, as measured by the CPI, has increased in the last two years, but that increase has not yet resulted in rising revenues for the City and its residents, with any easing of their financial constraints. In this circumstance, it is appropriate that Patrol Officers receive the same wage increases received by most of the City's other employees, who are similarly affected by inflation.

ISSUE 2: TEMPORARY SUPERVISORS' PAY

Section B-VII of the current labor agreement is set out below:

Temporarily Appointed Supervisors. Effective January 1, 1999, employees temporarily appointed to be Acting Sergeant shall receive beginning Sergeant's pay.

The Union's Position.

The Union proposes that Section B-VII be deleted from the labor agreement and that the closing paragraph of Appendix A be amended to provide:

Employees classified or assigned by the Employer to the following job classification or position will receive \$250.00 per month or \$250.00 pro-rated for less than a full month in addition to their regular wage rate: Investigator (Detective), Canine Officer, School Liaison Officer, Drug Task Force Officer and Acting Sergeant Position.

The Employer's Position.

After the hearing in this matter, the parties notified me that the Employer has agreed to the change sought by the Union, as set out above, thus settling this issue.

Award.

Consistent with the parties' settlement, I award the Union's position.

ISSUE 3: PERSONAL LEAVE -- PARTICIPATION IN
PERSONAL LEAVE FOR CURRENT/NEW HIRE
EMPLOYEES

Article B-IX of the current labor agreement, which is entitled "Personal Leave," is set out below:

Section B-IX.1. Effective January 1, 1995, all employees may make an irrevocable election to participate in the Personal Leave Plan in accordance with the City's Personnel Rules and Regulations.

Section B-IX.2. Employees who participate in the Personal Leave Plan are not eligible for Article [B-I.1] - Vacations, Article B-III - Severance, nor Article [B-VIII] - Sick Leave.

Section B-IX.3. Employees who participate in the Personal Leave Plan are eligible for short-term disability benefit that is provided by the City.

Section B-IX.4. Employees who participate in the Personal Leave Plan and do not utilize the City's full insurance contribution by purchasing optional insurances, may elect to contribute the unused amount to a deferred compensation account.

The Employer's Position.

The Employer proposes that, in the new labor agreement, Section B-IX.1 be amended by adding the following sentence at the end of the current text:

All employees hired after January 1, 2012 shall participate in the Personal Leave Plan in accordance with the City's Personnel Rules and Regulations.

In its post-hearing written argument, the Employer suggested that its position be awarded with the effective date changed, so that mandatory participation in the Personal Leave Plan apply to those hired after December 31, 2012.

The Union's Position.

The Union opposes any change in the language of Section B-IX.1 during the new contract's duration.

Decision and Award.

The current labor agreement provides eighty hours of vacation during the first five years of employment, one hundred

twenty hours during the second five years of employment, an additional forty hours, added in increments of eight hours per year, during the next ten years of employment, and after twenty years of employment, an additional eight hours per year up to a maximum of two hundred hours per year.

The current labor agreement provides for sick leave to be credited at the rate of eight hours per month of employment with no limit on the maximum that can be accumulated. The current labor agreement also provides that employees leaving employment in "good standing" will be paid one-third of accumulated sick leave, "but not to exceed 240 hours of accumulated sick leave."

The Employer's proposal would, for newly hired Patrol Officers, eliminate these contractual provisions for vacation, sick leave and severance pay and require that these new employees participate in the Employer's Personal Leave Plan. The Employer presented evidence describing the Personal Leave Plan, which I summarize as follows:

Employees accrue Personal Leave at the following rate:

<u>Years of Service</u>	<u>Personal Leave Earned Per Year</u>
0 to 5	15 Days
6 to 10	20 Days
11	21 Days
12	22 Days
13	23 Days
14	24 Days
15 to 20	25 Days
21	26 Days
22	27 Days
23	28 Days
24	29 Days
25 or More	30 Days

The Employer notes that this rate of accrual for Personal Leave days provides five more days than does the vacation schedule made available by the current labor agreement. New employees may use Personal Leave on the first day of the month following thirty days of employment, whereas, under the current labor agreement, new employees cannot use vacation until the completion of the probation period. The maximum number of days that may be accumulated without use is 200 hours, with the following exceptions.

Employees may cash out twenty-four Personal Leave hours in excess of the 200 maximum at the end of each calendar year, or they may contribute hours to a Post Retirement Health Care Savings Plan or they may carry over excess hours into the first quarter of the next calendar year, depending on whether the employee is covered by a Minnesota State Retirement System Post Employment Health Care Savings Plan agreement.

Employees who leave employment by the City in good standing receive 100% of unused Personal Leave as severance pay. Employees are eligible for three days of bereavement leave, a benefit not available under the current labor agreement. Employees covered by the Personal Leave Plan receive short-term disability that provides 80% of regular earnings during the third through eighth week of disability and 60% of regular earnings through the thirteenth week, when, as now, the employee receives payments of long-term disability insurance. Employees who participate in a wellness program earn twenty-four hours per year of Wellness Leave if they are participants in the Personal Leave Plan.

The Employer notes that all City employees except Patrol Officers and Police Supervisors have mandatory participation in the Personal Leave Plan for all new hires and all current employees who had less than six years of service on December 31, 1994. At the time of the hearing, about 68% of the City's employees participated in the Personal Leave Plan, including seventeen of eighteen IUOE employees, one of six Police Supervisors, one of twenty-three Patrol Unit employees and all but one of the non-union employees.

The Union opposes the requirement that newly hired Patrol Officers participate in the Personal Leave Plan. It argues that, despite the provision of some benefits that employees do not have under the current labor agreement, there remain detriments to participation -- primarily, the loss of unlimited accumulation of sick leave.

The Union also argues 1) that, in four past arbitration proceedings, dating from the 1990s, the Employer has proposed making participation in the Personal Leave Plan mandatory, 2) that in each of those proceedings, the Union has opposed the Employer's proposal, and 3) that the four arbitrators accepted the Union's argument that employees should be permitted to continue their present option of electing to participate, which they may do if they consider the Personal Leave Plan advantageous, or, if not, to continue receiving the benefits available under the provisions of the labor agreement.

For the following reasons, I award the Union's position. As the Employer argues, the Personal Leave Plan offers features that can be perceived as more beneficial to employees than the

benefits provided by the labor agreement. It seems, though, that most members of the Patrol Unit and of the Supervisors Unit prefer the benefits provided by the labor agreement. Of the twenty-nine police employees who are members of those two bargaining units, only two have elected participation in the Personal Leave Plan. I agree with the Union and with previous arbitrators who have considered the issue, that, if the Employer seeks to change a major term of the agreement, it should show a substantial need for change or should obtain it in bargaining by offering something in exchange.

ISSUE 4: REVISION OF MEMORANDUM OF UNDERSTANDING
REGARDING ELIGIBILITY FOR INSURANCE
CONTRIBUTION REMAINDER
ISSUE 5: PERSONAL LEAVE -- ELIGIBILITY FOR
INSURANCE CONTRIBUTION REMAINDER

The Employer's Position.

In past years, the Employer has made a monthly contribution to the cost of health insurance, contributing the entire amount to the cost of family coverage for those who selected such coverage. For those who selected less costly "single" coverage (or for those who waived coverage, if covered under a spouse's insurance), the Employer has contributed less than the maximum monthly contribution. For example, in 2009, the amount of the Employer's monthly contribution was \$700. For those selecting family coverage, the entire \$700 was used as a contribution toward that coverage. Those who selected single coverage received 90% of \$700, or \$630, toward the cost of that coverage. Those who waived coverage received \$630 as a taxable cash benefit.

The Employer uses HealthPartners to underwrite health insurance coverage for its employees. In 2010, the Employer increased its contribution to insurance coverage, setting the monthly contribution for those who selected family coverage at \$875 and, for those who selected single coverage, at \$700. Just before the health insurance renewal process began, the Employer's third party administrator informed the Employer that it was not in compliance with the underwriting guidelines of HealthPartners, and that, if the Employer did not comply with those guidelines, premiums would be increased by 43% rather than the expected increase of 18%.

HealthPartners' underwriting guidelines did not allow an employer to make a waiver of coverage payment in excess of \$490.87 per month to employees who waived coverage. The Employer notified its non-union employees and the unions representing its union employees of this departure from underwriting guidelines, and, the Employer avoided the prospective premium increase by entering into a Memorandum of Agreement ("Original MOA") with the representatives of all its union employees. The Original MOA provided 1) that the waiver of premium payment would be capped at \$490.87 per month, and 2) that employees hired after November 1, 2009, would not be eligible to receive any monetary incentive if they chose to waive insurance coverage.

In the spring of 2011, the Employer learned that two newly hired IUOE employees had enrolled in the Employer's group health insurance plan with the high deductible option and were receiving as wages money in excess of what was permitted by the

underwriting guidelines. To resolve this problem, the Employer proposed an amendment to the Original MOA (the "Amended MOA"), which was agreed to by the IUOE and by the Union in its capacity as representative of the Police Supervisors' Unit. In its capacity as representative of the Patrol Unit, however, the Union opposes adoption of the Amended MOA.

I set out below the Amended MOA proposed by the Employer:

The purpose of this Memorandum of [Agreement] is to assist both Labor and Management in dealing with the changes that have been made to the City contribution towards health, dental and life insurance for 2011, 2012 and 2013.

The following changes have been made in the manner in which the City contribution towards health insurance is being made, as well as the maximum amount an employee who is on personal leave can receive if they choose to waive health insurance benefits.

- A. To maintain compliance with HealthPartners underwriting guidelines, the maximum amount the City is allowed to provide employees who waive health coverage is \$523.38/month in 2012.
- B. Employees hired after November 1, 2009 will not be eligible to receive any monetary incentive if they choose to waive health insurance coverage.
- C. Employees hired after November 1, 2010 who select single medical insurance coverage will not be eligible to receive any monies remaining from the City contribution after the purchase of health, dental and life insurance, unless the employee selects a high-deductible health plan, and then, up to one-half of the high-deductible plan's deductible is deposited into the employee's health savings account from said overage.

For example, in 2012, the City's contribution is \$725 and the cost of the \$4,000 high-deductible plan, single dental and life is approximately \$448.38, leaving an overage of \$276.62 per month. If the \$4,000 high-deductible plan was selected, a maximum of \$76.92/pay period would be deposited into the employee's health savings account totaling \$2,000 in a calendar year.

The Employer also proposes that Section B-IX.4 of the current labor agreement be amended by adding the underlined text to the section's current language, thus to conform it to the changes that would be made by adoption of the Amended MOA:

Employees who participate in the Personal Leave Plan and do not utilize the City's full insurance contribution by purchasing optional insurances, may elect to contribute the full unused amount to a deferred compensation account. Employees hired after November 1, 2009 will not be eligible to receive any monetary incentive if they choose to waive health insurance coverage. Employees hired after November 1, 2010 will not be eligible to receive any remaining monies after the purchase of health, dental and life insurance unless the employee selects a high-deductible health plan. If an employee selects a high-deductible health plan then up to one-half of the high-deductible plan's deductible will be deposited into the employee's account from said overage.

The Union's Position.

The Union opposes both proposals of the Employer -- the adoption of the Amended MOA and the amendment of Section B-IX.4.

Decision and Award.

The Employer argues that this modification of the Original MOA is necessary to comply with the underwriting guidelines of HealthPartners, its health insurance provider. The Employer notes that the modification has been made to apply to all its non-union employees and that the modification has been executed by the IUOE and by the Union in its capacity as representative of the Police Supervisors' Unit. The Union argues that the amendment of Section B-IX.4 reduces a benefit that would induce participation in the Personal Leave Plan and that it should be adopted only in the give and take of bargaining unless the Employer can show a compelling need for the change.

The evidence shows that only one member of the Patrol Unit participates in the Personal Leave Plan. With the award, above, of the Union's position on Issue 3, future participation in the Personal Leave Plan by other Patrol Officers will remain optional. Because the proposed modification of the Original MOA is needed to prevent a substantial increase in health insurance premiums, I award the Employer's position on Issue 4, and, because the proposed amendment of Section B-IX.4 will impact only one employee, I award the Employer's position on Issue 5.

ISSUE 6: HOLIDAY PAY

Section B-II.2 of the current labor agreement is set out below:

Holiday Pay: Employees shall be paid one and one-half (1-1/2) times their base rate of pay for working the following holiday hours:

Martin Luther King Day - From 0700 on Martin Luther King Day to 0700 the following day.

President's Day - From 0700, third Monday in February to 0700 the following day.

Memorial Day - From 0700, fourth Monday in May to 0700 the following day.

Independence Day - From 0700, July 4th to 0700, July 5th.

Labor Day - From 0700, first Monday in September to 0700 the following day.

Veterans' Day - From 0700 on Veterans' Day to 0700 the following day.

Thanksgiving - From 0700 on Thanksgiving Day to 0700 the following Saturday.

Christmas - From 1500 December 24th to 1500 December 25th.

New Year's - From 2300 December 31st to 2300 January 1st.

The Union's Position.

The Union proposes that Section B-II-2 of the labor agreement be amended by substituting the following text for the text that I have underlined above, which pertains to Christmas:

Christmas Eve and Christmas Day - From 0700 on Christmas Eve Day to 0700 the day after Christmas Day.

The Employer's Position.

The Employer proposes that the new labor agreement make no change in Section B-II.2 of the current labor agreement.

Decision and Award.

The Union's proposal would increase the number of hours at the Christmas holiday for which Patrol Officers would be paid premium pay from 24 hours to 48 hours, thus increasing the total of annual holiday hours from 96 to 120. The evidence shows 1) that Patrol Officers have had the same holidays hours -- a total of 96 hours -- that are provided in the current labor agreement at least since 1999. The Police Supervisors' labor agreement for 2011-2013 provides premium pay for the same 96 hours. All other employees of the City have holidays for 96 hours, though the designation of particular days may differ.

Most of the twelve cities in the Metro Group provide Patrol Officers with 96 hours of premium pay for holiday work on twelve designated holidays, and some include Christmas Eve as one of the days that qualify for such premium pay. Some cities in the group provide more -- 108 hours on designated days.

For the following reasons, I award the position of the Employer. The evidence does not show that the City provides substantially fewer holiday hours than what is usual among the cities of the Metro Group. In addition, the evidence shows that the holiday hours provided to the Patrol Unit are the same as those provided to the other employees of the City, including Police Supervisors.

ISSUE 7: SHIFT DIFFERENTIAL

The current labor agreement does not establish a shift differential.

The Union's Position.

The Union proposes the establishment of a shift differential by adding the following provision to the new labor agreement:

In addition to the base hourly salary as shown in Appendix A, a shift differential of \$0.50 (fifty cents) per hour shall be paid for any hours worked by any employee between the hours of 1900 and 0700 each day.

The Employer's Position.

The Employer opposes the Union's proposal to establish a shift differential.

Decision and Award.

The Union makes the following arguments. Patrol Officers must provide services twenty-four hours per day. Consequently, they must work with additional stress that comes from a variable work schedule with unusual hours. Research indicates that working such a schedule can have an adverse effect on health. Many employers have recognized the adversity by providing premium pay for night-shift work. Therefore, it is appropriate that the new labor agreement provide the shift differential of fifty cents per hour for work between 7:00 p.m. and 7:00 a.m.

The Employer makes the following arguments. None of its employees, including Police Supervisors, receives a shift differential. Only one of the twelve cities in the Metro Group

pays Patrol Officers a shift differential. If the Union wants this unusual benefit it should have offered a quid pro quo to obtain it in bargaining.

I award the position of the Employer. Neither internal nor external comparison supports the addition of this new benefit. If it comes into the parties' labor agreement, it should do so, not by arbitration, but through negotiation.

December 6, 2012


Thomas P. Gallagher, Arbitrator