IN THE MATTER OF THE ARBITRATION BETWEEN

THE UNION TRUSTEES OF
THE TWIN CITY HOSPITAL
WORKERS PENSION FUND,

Union Trustees,

and

THE EMPLOYER TRUSTEES OF
THE TWIN CITY HOSPITAL
WORKERS PENSION FUND,

Employer Trustees.

DECISION AND AWARD
OF
ARBITRATOR

APPEARANCES

For the Union Trustees:

Richard L. Kaspari
Metcalf, Kaspari,
Engdahl & Lazarus, PA
Attorneys at Law
Suite 230
2356 University Avenue West
St. Paul, MN 55114-1850

For the Employer Trustees:

Douglas J. Heffernan
Faegre Baker Daniels, LLP
Attorneys at Law
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

On September 11, 2012, in Minneapolis, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a matter in dispute between the "Union Trustees" and the "Employer Trustees" of The

Twin City Hospital Workers Pension Fund. The parties presented post-hearing written briefs to the arbitrator on October 11, 2012, and they presented reply briefs to him on October 21, 2012.

FACTS

The Service Employees International Union, Local 113 (sometimes referred to as as "SEIU, Healthcare Minnesota," or simply as the "Union"), is the collective bargaining representative of hospital employees who work throughout Minnesota in classifications such as Nursing Assistant, Case Aide, Maintenance Worker and Cook. About 10,000 of the employees represented by the Union work in sixteen hospitals in the metropolitan area that includes Minneapolis and St. Paul, Minnesota. The sixteen hospitals are operated by six corporations.

For several years, five of these corporations have formed a multi-employer group and, as a group, have bargained with the Union about the terms and conditions of employment of their employees who are represented by the Union. One of the six corporations, Allina Health Systems, Inc. ("Allina"), has bargained about terms and conditions of employment of Union employees in separate negotiations, executing several labor agreements for the several hospitals Allina operates. Currently, nine labor agreements establish the terms and conditions of employment of the Union-represented employees who work in the sixteen hospitals.

As of January 1, 1966, the Union and the operators of the hospitals in the Minneapolis and St. Paul metropolitan area (the "Twin City Hospitals") entered into a Trust Agreement (the "Trust

Agreement") establishing a pension plan (the "Plan") for employees represented by the Union who work in hospitals operated by the Twin City Hospitals. I note that, since 1966, the number of hospitals and the number of entities that have been parties to the Trust Agreement (and, thereby, to the Plan) have varied. Nevertheless, consistent with arguments made by both parties in this proceeding, I consider the Trust Agreement, with amendments since 1966 (and with the Plan it adopts), as an agreement having a continuing existence since its inception in 1966, notwithstanding changes in the hospitals and in the entities operating them.

In May of 1975, the participating corporations operating the Twin City Hospitals amended the Trust Agreement, bringing it into compliance with the Employment Retirement Income Security Act of 1974 ("ERISA"). Hereafter, unless otherwise stated, my citations to the Trust Agreement refer to its 1975 version.

Article III of the Trust Agreement provides that administration of the Plan and of the trust fund it establishes (the "Fund") is to be conducted by six trustees. Three of the six trustees, who are designated "Employer Trustees," are to be appointed by the operators of the hospitals, and three of the six trustees, who are designated "Union Trustees," are to be appointed by the Union. Article III also provides that, in administering the Plan, the Employer Trustees are to have one vote collectively and the Union Trustees are to have one vote collectively -- thus establishing that neither the Union Trustees nor the Employer Trustees can determine any issue without unanimity of the two available votes.

Section III.o of the Trust Agreement, part of which is set out below, provides for resolution of issues about which the Union Trustees and the Employer Trustees disagree -- an impasse the parties refer to as a "deadlock":

> Any unresolved dispute arising out of the action, or inaction, of the Trustees, or the operation of the Pension Fund, shall be submitted to arbitration upon prompt written notice by the Trustees. Such notice shall set forth the nature of the dispute and request submission to a neutral arbitrator. The decision of the neutral arbitrator shall be final and binding on all parties . . . .

Julie K. Schnell, a Union Trustee for ten years and now an alternate Union Trustee, testified that, since inception of the Plan in 1966, it has included a provision establishing Total and Permanent Disability Benefits. The Union Trustees presented in evidence a 1968 copy of the Plan, and Schnell testified that the text of that document was the same as that of the original Plan adopted in 1966. Below, taken from this 1968 copy of the Plan, I set out Article II of the Plan, entitled "Classes of Benefits and Service Credits," which establishes three kinds of benefit available; I also set out excerpts from Article IV of the 1968 copy of the Plan, entitled "Total and Permanent Disability Benefits," which describes those benefits:

> Article II -- Classes of Benefits and Service Credits.
>
> Section 1. There shall be three (3) classes of benefits payable under this plan:
>
> 1. Normal Retirement Benefits
> 2. Permanent and Total Disability Benefits
> 3. Termination Benefits
>
> An employee shall become entitled to the aforementioned classes of benefits on or after January 1, 1966.

Article IV -- Total and Permanent Disability Benefits.

Section 1 -- Eligibility: An Employee shall be eligible to receive a total and permanent disability benefit of $25.00 per month, provided:

a. That the disability shall have occurred after January 1, 1966.
b. That the Employee shall have had, during the period immediately preceding his total disability, 20 years of continuous service.
c. That the Employee shall have been totally and permanently disabled at least six months before benefits are paid.

Section 2 -- When Paid: An Employee who meets the eligibility conditions for total and permanent disability benefits, as set forth in Section 1 of this Article, upon approval of the Trustees of an application submitted to the Trustees in a form satisfactory to them, shall become entitled to total and permanent disability benefits. The Trustees shall have the power to require an Employee claiming under this Article to be examined by a physician or a clinic selected by the Trustees, and any Employee declared to be totally and permanently disabled by such physician or clinic shall be entitled to the total and permanent disability benefits.

Section 3 -- Benefit After Age 65: The total and permanent disability benefits shall be payable only during continued total disability and until the age of 65. Any Employee receiving a total and permanent disability shall, upon reaching the age of 65, thereupon begin receiving his normal retirement benefit and his right to receive further total and permanent disability benefits shall cease.

Section 4 -- Recovery of a Disabled Employee: In the event a disabled Employee temporarily recovers and is re-employed but subsequently re-retires, under these total and permanent disability provisions, benefits shall resume the first month following subsequent retirement.

Section 5 -- Termination of Benefits: Total and permanent disability benefits shall be terminated:

a. If the Employee engages in an occupation or employment (except for rehabilitation as determined by the Trustees) for remuneration or profit, which employment would be inconsistent with the finding of total and permanent disability, or
b. If the Trustees determine on the basis of medical findings that Employee has sufficiently recovered to resume a regular occupation or employment for profit or remuneration, or

c. If the Employee refuses to undergo a medical examination requested by the Trustees; provided, however, that the Employee may not be required to undergo a medical examination more often than twice a year.

The Trustees, as authorized by the Trust Agreement, have amended the Plan from time to time, and those amendments include some that are sufficiently broad to be designated as "Restated." The current version of the Plan is the "Fourth Restated Twin City Hospital Workers Pension Plan," effective on January 1, 2009. Its Article 2, entitled "Classes of Benefits," provides:

> There shall be seven classes of benefits payable under this Plan:
>
> Normal Retirement Benefits
> Early Retirement Benefits
> Joint and Survivor Benefits
> Total and Permanent Disability Benefits
> Vested Retirement Benefits
> Pre-Retirement Death Benefits
> Post-Disability Death Benefits

Article 6 of the Fourth Restated Plan contains the current description of Total and Permanent Disability Benefits (hereafter, merely "Disability Benefits"). It does so, making little relevant change in the original version, except for two changes included in its Section 6.02, set out below -- 1) an increase in the monthly benefit amount effective originally on January 1, 1985, from $25.00 to $75.00, and 2) a provision effective on January 1, 1993, changing the status of a totally and permanently disabled participant who receives the Disability Benefit until age 62 to that of a retired participant eligible for the Plan's retirement benefits:

> <u>Section 6.02. Amount of Total and Permanent Disability Benefits</u>: Effective January 1, 1985, the monthly Total and Permanent Disability Benefit shall be $75.00

> and shall be payable during continued Total and Permanent Disability and until the Participant reaches the age of sixty-five (65). Effective January 1, 1993, if such payment continue until the Participant reaches the age of sixty-two (62), it shall be considered that the Participant retires at the time and is entitled to benefits in accordance with the provisions of Articles 3, 4 and 5.

The 1985 change in the monthly Disability Benefit payment, from the original $25.00 to $75.00, is the only change in that payment occurring since inception of the Plan in 1966.

Section 1.30 of the Fourth Restated Plan includes the following definition of "Total and Permanent Disability":

> The term "Total and Permanent Disability" shall mean a physical or mental condition of a Participant which the Trustees find on the basis of medical evidence to totally and permanently prevent such Participant from engaging in any occupation for wage or profit, and in the opinion of the medical examiner the disability will be permanent and continuous during the remainder of the Participant's life. However, no Participant shall be deemed to be totally and permanently disabled for the purpose of this Pension Plan if the incapacity consists of chronic alcoholism or addiction to narcotics or if such incapacity was contracted, suffered or incurred while engaged in a felonious enterprise, or resulted from the felonious enterprise or resulted from an intentionally self-inflicted injury, or from an injury, wound or disability incurred while serving with the Armed Forces of the United States, or from injury, wound or disability suffered or arising out of a state of war.

At a meeting of the Board of Trustees held on September 23, 2011, the Union Trustees made several proposals to increase benefits paid by the Plan. One of those proposals was that the amount of the Disability Benefit be increased from $75.00 per month to $150.00 per month, the increase to be effective as of January 1, 2012. The Union Trustees cast their one collective vote in favor of the motion, and the Employer Trustees cast their one collective vote against it.

The parties agree that, because the Union Trustees voted in favor of their motion to increase the Disability Benefit and the Employer Trustees voted against it, the issue is deadlocked. The parties selected me as arbitrator, empowered by Article III.o of the Trust Agreement, to resolve the deadlock. I note that, in exercising that power, I am permitted only the option of casting a deciding vote for or against the Union Trustees' motion and that I have no discretion to modify the motion by awarding a change of benefit different from the change proposed by the motion.

DECISION

The Union Trustees make the following arguments. The increase in the Disability Benefit they seek, from $75.00 per month to $150.00 per month, is a reasonable increase, justified by price inflation since 1985, which has totalled 214.4% -- as measured by the cumulative cost-of-living adjustments made in social security benefits since then. In addition, the Union Trustees argue that there are few employees who receive the Disability Benefit -- nine employees at the time the motion at issue was made in September of 2011 and fourteen employees at the time of the hearing -- and that, therefore, the cost of the increase would not be substantial, leaving the Plan's Fund still well able to pay its other benefit obligations.

The Employer Trustees' arguments against the motion to increase the Disability Benefit are summarized in a letter written by them to the entire Board of Trustees on February 22, 2012, in which the Employer Trustees describe their opposition to several proposals to enhance benefits made by the Union Trustees. Below, I reproduce the particular paragraph of that letter that addresses the proposal to increase the Disability Benefit (the paragraph numbered 2) and, in addition, the remainder of the letter, which states arguments related to proposed benefit enhancements in general:

> Re: Proposals for Benefit Enhancements
>
> The Hospital Trustees thought it would be useful to clarify their position with respect to consideration of various proposed benefit enhancements under the Twin City Hospital Workers Pension Plan (the "Plan") based on the funded status of the Plan, in order to facilitate further discussion.
>
> The Hospital Trustees have articulated several guiding principles that they take into account in considering Plan benefit enhancements:
>
> 1. The Plan is well funded, and it is important to protect that funded status for the long-term viability of the Plan and in order to fulfill the commitment to current covered employees to provide future retirement benefits.
>
> 2. Given the charter of the Trust Agreement and the collective bargaining agreements providing for employer contributions to the Plan to provide pension benefits, if Plan assets are sufficient to provide benefit enhancements, the enhancements should focus on those that impact retirement benefits. Ancillary benefits, such as disability benefits and death benefits, that can be more effectively provided outside the Plan should be negotiated separately and provided outside the Plan.
>
> 3. Unless a substantial surplus arises (e.g., accrued benefit funded ratio exceeding 150%), any benefit enhancements should be designed primarily to benefit current participants who are performing the services that are the basis for employer contributions currently funding the Plan, rather than for the benefit of retirees and vested terminated participants.
>
> 4. Benefit enhancements can only prudently be made based on a projection of current Plan assets and anticipated future contributions based on the current negotiated

contribution rate. The benefit enhancements should not be projected to require increased employer contributions in order to be sustained, because contributions are negotiated separately between the employers and the employees beyond the control of the Trustees and therefore the Trustees cannot count on increased contributions when making benefit enhancement decisions. This sustainability is judged primarily based on three measures: (i) the funding period, (ii) the accrued benefit funded ratio, and (iii) the normal cost as a percentage of contributions.

Based on these guidelines, the most likely benefit enhancement the Hospital Trustees would be willing to consider would be an increase in the pension benefit amount for future service only.

Also, given the volatility in the rate of return on Plan assets in recent years coupled with currently low interest rates and an overall challenging investment environment, the Hospital Trustees are concerned about the rate of return assumption used by the Plan actuary in calculating the impact of various benefit enhancement proposals. The Hospital Trustees would like to have the Plan actuary perform a projection valuation to demonstrate the sensitivity of the Plan funded status under various scenarios in which the rate of return is less than the assumed average 7.5% annual rate for several years before recovering to a rate that returns the average to 7.5% over a long period. (For example, one scenario would be 3.5% returns for 2012 through 2917, followed by 8.87% returns for 2018 through 2032.) Comparison of several alternative scenarios would be particularly helpful to determine the sensitivity to volatility in the rate of return. The analysis should include illustration of differences in the annual projected funding period and normal cost under the different scenarios. (The Hospital Trustees are happy to discuss additional projection details with the Union Trustees and the Plan actuary if further clarification of this request is needed.) Depending on the results of that sensitivity study, the Hospital Trustees might suggest calculating the funding period and the normal cost for purposes of analysis under No. 4 above based on a rate assumption of less than 7.5% (e.g., 7.25% or 7%).

Depending on the results of the projection valuation scenarios, the Hospital Trustees could, for example, conclude that a benefit enhancement is consistent with principle No. 4 above if all three of the following criteria are satisfied:

- After the benefit enhancement, the accrued benefits funded ratio is projected to remain above 110%.

- After the benefit enhancement, the normal cost is projected to be no more than 75% of contributions, using a 7.25% return assumption.

- The funding period target does not exceed 5 years, using a 7.25% return assumption.

Note, however, that the Hospital Trustees are not locked in on the percentage set out in the criteria above. These have been provided for illustration of the principle. The Hospital Trustees view of the appropriate percentages will be influenced by the results of the projection valuation analysis requested in the preceding paragraph.

The parties presented in evidence the nine labor agreements that establish the terms and conditions of employment of Union employees in the sixteen hospitals operated by the Twin City Hospitals. Each of the labor agreements bargained by the Union and the multi-employer group has a provision (substantially the same as the following in each agreement) that provides a short-term disability benefit:

Short-Term Disability.

Employees regularly scheduled twenty (20) hours per week or more shall receive $180 per week on a pro-rated basis commencing the twentieth (20th) day of a disability or after all allowable sick leave has been utilized, whichever occurs later. Disability payments shall be made for a maximum period of 26 weeks.

Effective March 1, 2000, employees regularly scheduled twenty (20) hours per week or more shall receive fifty percent (50%) of their authorized weekly gross compensation for short-term disability commencing the twentieth (20th) day of a disability or after all allowable sick leave has been utilized, whichever occurs later. [This second paragraph is omitted from one of the six labor agreements jointly bargained by the multi-employer group.]

The labor agreements covering the several hospitals operated by Allina provide a short-term disability benefit through "income protection" insurance and a long-term disability benefit, also through insurance, with features different from the short-term disability benefit provided in the labor agreements bargained between the multi-employer group and the Union.

The nine labor agreements all provide that, for each hour worked by a Union employee, the respective hospital operator will contribute to the Plan $0.56 effective March 1, 2012, and $0.59 effective March 1, 2014 (the "Contribution Rate").

The Employer Trustees note that, in all of the nine labor agreements, substantially the same language appears in the article that establishes the Contribution Rate to be made by the hospital operators. The language below is an excerpt taken from the labor agreement between the Union and the operator of North Memorial Hospital; this language (hereafter, the "Pension Benefits" language) is set out as an example of the language that appears in all of the nine labor agreements:

> Article 12. Pension Benefits.
>
> (A) Pension contributions shall be provided to the existing Twin City Hospital Workers Pension Fund in the following manner:
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> | | |
> |---|---|
> | Effective March 1, 2008 | $0.56 |
> | Effective March 1, 2014 | $0.59 |
>
> (B) The Hospital shall pay from the employee's date of hire to said pension fund, the above amount for each hour worked by each employee covered by the terms of this Agreement. . .
>
> (C) The payments made shall be used to provide pension benefits for covered employees and shall apply to employees retiring on or after January 1, 1966. The amounts paid to the pension fund shall be held in trust for the exclusive benefit of all covered employees.
>
> (D) . . .
> The trustees shall apply all funds received pursuant to this Article exclusively to provide pension funds, except such disbursements that are specifically provided for herein. . . .

The labor agreements do not provide for any contribution to the Fund other than the contribution thus established by the Pension Benefits language found in all nine of the labor agreements. The Trustees have no authority to obtain contributions to the Fund by assessment or otherwise. Their authority includes, within limits set by the Trust Agreement and by ERISA, the power to invest Fund assets. In addition, the Trustees have authority, within those limits, to decide the amount of the benefits to be paid from Fund assets to Plan participants. Indeed, though the present dispute concerns a disagreement about the amount of the Disability Benefit, it does not challenge the authority of the Trustees to set the amount of that benefit by two-vote unanimity.

The primary argument of the Employer Trustees is that the assets of the Fund should be preserved to provide retirement benefits rather than non-retirement benefits, such as the Disability Benefit. They argue that a pre-retirement disability benefit can be provided more effectively outside the Plan, as the Union and the hospital operators have done in the nine labor agreements that establish terms and conditions of employment of Union members. They urge that, if the Plan's Disability Benefit is increased, as the Union Trustees propose, the increase would require an increase in the number of personnel used to administer Plan benefits. Currently, the Trustees use 1.5 full-time-equivalent employees to administer all Plan benefits, whether related to retirement or to disability. In their administration of the Disability Benefit, these administrative employees follow determinations of eligibility made by the

United States Social Security Administration. As I understand this argument of the Employer Trustees, they urge that it is more efficient to administer disability benefits established outside the Plan by labor agreements, using personnel provided by short-term or long-term disability insurers. They raise the fear that the proposed increase in the Disability Benefit will cause an increase in those claiming a total and permanent disability, thus requiring more careful administration and an increase in the personnel used in benefit administration.

In response to this argument of the Employer Trustees, the Union Trustees argue that the current method of administering the Plan's Disability Benefit has been in place for many years with no evidence that such administration has been done in error. In addition, the Union Trustees argue that very few Plan participants are eligible for this benefit 1) because eligibility requires twenty years of employment, 2) because few meet the restrictive definition of total and permanent disability, and 3) because, since 1993, eligibility ends at the age of 62. Finally, the Union Trustees argue that, even with the increase they propose, the amount of the Plan's Disability Benefit would be so small that it would be unlikely to induce false claims.

Kimberly K. Faust, an employee of Allina and, since 2002, one of the three Employer Trustees, testified as follows. He has participated with the Fund's actuaries in directing the Fund's investments. When world economies experienced severe recession starting in 2008, the investment performance of the Fund suffered substantially. For many years, the Board of

Trustees and the Fund's actuaries planned financial administration and benefit payments using an assumption of a 7.5% annual performance return on investments. With the onset of the financial recession in 2008, however, Faust became concerned that diminished performance would affect the ability of the Plan to pay future benefits, as the Fund's investments suffered substantially. When the Union Trustees moved to increase the Disability Benefit, Faust thought the Board of Trustees should give priority to retirement benefits when making benefit improvements. He made that judgment because the primary purpose of the Plan is to provide retirement benefits to Plan participants. Faust testified that, according to the Plan's actuaries, as of January 1, 2012, the Fund's rates of return for the past stated periods were the following:

Period	Rate or Return
One Year	-1.31%
Two Years	+1.57%
Five Years	+3.3%
Ten Years	+4.47%
Fifteen Years	+6.05%
Twenty Years	+6.59%

Faust conceded on cross-examination that the Fund's actuaries have assumed a 7.5% rate of return for twenty years when advising about Fund performance.

Schnell testified that, at the meeting of the Board of Trustees on September 23, 2011, when the Union Trustees first proposed to increase the Disability Benefit, the Employer Trustees responded that disability benefits should be considered in labor-agreement bargaining about terms and conditions of employment and should not be considered as a benefit provided by the Plan. Schnell testified, however, that the Employer Trustees "agreed" that the proposed increase in the Disability Benefit was was "not a cost issue." According to Schnell, the Union Trustees took the position that, because the Plan has, from inception, provided a disability benefit as one of its covered benefits, the Board of Trustees had a fiduciary responsibility to make appropriate adjustments in the Plan's Disability Benefit rather than leave disability benefits to be determined in collective bargaining -- a forum that could lead to variations in disability benefits among the employees of separately bargaining hospital operators.

The parties presented two reports addressed to the Board of Trustees by Kathryn A. Garrity, Chief Actuary for United Actuarial Services, Inc., the Plan's actuary. One of the reports, which is dated August 15, 2011, is entitled, "January 1, 2011 Actuarial (preliminary) Valuation Results and Benefit Change Studies," and the other, which is dated August 22, 2012, is entitled "January 1, 2012 Actuarial Valuation Results and Benefit Change Studies. Hereafter, I refer to these reports as the "2011 Report" and the "2012 Report").

Both reports indicate that the proposed increase in the Disability Benefit would have little effect on the Plan's capacity to pay benefits. I set out below excerpts from the 2012 Report:

> 2012 Valuation Highlights
>
> Plan assets earned -1.3% on a market value basis. In addition, there is now about $6.5 million in deferred asset losses and the actuarial value of assets is 106% of

the market value. This resulted in declines in some funding measures. Some key results compared to last year are shown below.

- The Plan remains healthy (neither endangered nor critical) under the Pension Protection Act (PPA).
- The funding period increased from 2.17 years to 5.71 years. This measures the time until the Plan would be 100% funded on the more conservative entry age normal accrued liability basis (see more discussion of liability measures under criteria for benefit increases below) and assuming the actuarial value of assets earns 7.5%. If instead we take into account deferred losses and assume market value of assets will earn 7.5%, the funding period increased from 3.82 years in 2011 to 11.48 years in 2012.
- The accrued benefits funded ratio decreased from 119% to 114% on an actuarial value of assets basis and decreased from 116% to 107% on a market value of assets basis. . .

<u>Review of Possible Criteria for the Affordability of Benefit Increases</u>.

. . .

In past discussions of funding goals, I presented history for your Plan on three different measures of Plan health and the value of new benefits.

- The most comprehensive measure is funding period. This is the length of time until the Plan will be 100% funded on an entry age normal accrued liability basis. This measure looks at both current funded level and the expected excess of future contributions over new benefits earned. Over the last ten years this value has been between zero and two for your Plan in all years except January 2009 at the investment market lows. The IRS minimum funding rules imply a funding period target of about 8 to 10 years as most changes are now initially spread over 15 years.
- The accrued benefits funded ratio is one of the measures used to determine PPA status and is therefore discussed often. This measure looks only at current funded level (of benefits already earned), and does not look at future benefit accruals or future contributions. For most of the last ten years this measure has been between about 120% and 130% for your Plan. The required level to avoid endangered or critical status under PPA is only 80%.
- The final measure is benefits earned (normal cost) as a percentage of contributions. This measure focuses only on the future and does not look at current funded level of benefits already earned. This

> measure has not been consistent over the last ten years. In the years 2000 to 2002, over 90% of contributions [were] needed for new benefits being earned, which is probably somewhat too high. Since then contribution rates have increased almost twice as fast as the basic benefit accrual rate. So over the last five years, only between 50% and 60% of contributions were needed for the new benefits being earned in a year. This is likely a little too low for a plan that is also well funded and is expected to result in fairly rapid increases in other funding measures.

Garrity's 2012 Report responds to a request made by the Employer Trustees to evaluate the health of the Fund if the long-term assumed rate of return on Fund assets were reduced from 7.5% to 7.25% or 7.00%. Evaluation based on those reduced rates of return shows a substantial diminution in the financial health of the Fund.

Both the 2011 Report and the 2012 Report estimate how the proposed Disability Benefit increase would affect several measures of the Fund's health. Thus, the 2011 Report estimates that the proposed increase would raise the Plan's Funding Period by .09 of a year -- from 2.17 years to 2.26 years. The 2011 Report also estimates that, if the proposed increase were adopted, it would cause the Contribution Rate needed to achieve a Funding Period of 2 years to rise by one cent, but that the proposed increase would not require any rise in the Contribution Rate to achieve a Funding Period of 3 years, 4 years or 5 years.

In the 2012 Report, Garrity states that her evaluation of the proposed increase in the Disability Benefit "included doubling the current rates of disability incidence to account for greater utilization when it is more widely available." It is not clear from this statement why an assumption is made of wider "availability," but the assumption of a doubling of utilization has some relevance in evaluating a rise in claims possibly caused by an increase in the amount of the benefit -- an occurrence the Employer Trustees have suggested. The 2012 Report estimates that the proposed increase (assuming it to be effective on January 1, 2013, rather than on January 1, 2012) would raise the Plan's Funding Period by .06 of a year -- from 9.31 years to 9.37 years. The 2012 Report estimates that adoption of the proposed increase (as of January 1, 2013) would not cause any change in the Contribution Rate needed to achieve a Funding Period of 2 years, 3 years, 4 years or 5 years.

For the following reasons, I cast the deciding vote in favor of the motion to increase the Disability Benefit to $150.00 per month. The Employer Trustees' primary argument is that the Board of Trustees should give priority to retirement benefits when deciding what amount of each kind of benefit to distribute. They urge that such a priority is indicated 1) in the language of Article I.c. of the Trust Agreement, which states that "[t]he purpose of the Pension Fund is to provide pension and allied benefits" for its members and 2) in the language of Article I.e. of the Trust Agreement, which states that "[t]he Pension Fund shall be kept segregated from any other fund providing welfare benefits to employees." The Employer Trustees also argue that such a priority is consistent with the language establishing the Fund's Contribution Rate, as found in the several labor agreements between the Union and the operators of the sixteen hospitals. That language, similar to Article 12(C) of the labor agreement with North Memorial Hospital (quoted above), provides that contributions to the Pension Fund "shall be used to provide pension benefits for covered employees."

I agree that the chief purpose of the Plan is to provide retirement benefits. That priority is evidenced not only by the longstanding allocation of most of the Plan's distributions to retirement benefits, but also by past amendments to the Plan that have created a wider variety of retirement benefits. Nevertheless, Disability Benefits have always been included in the array of benefits provided by the Plan -- from its 1966 inception, throughout several amendments of the Plan by its Board of Trustees and continuing to the present. In 1975, when the Trust Agreement was amended, the Disability Benefit was included in the Plan, and presumably, when the parties to the Trust Agreement executed its 1975 amendment, they were aware that the Disability Benefit was included in the Plan.

The evidence shows that the proposed increase in the Disability Benefit will have only a slight effect on the financial health of the Fund. Because that effect will be slight, the increase will have little effect on the capacity of the Plan to pay retirement benefits and, thus, a negligible effect on the Contribution Rate needed to maintain retirement benefits. This evidence shows that the proposed increase in the Disability Benefit will not significantly diminish the priority given to retirement benefits.

At the time of the hearing, when fourteen participants were receiving the Disability Benefit, the cost to the Fund of increasing the benefit by $75.00 per month would be $1,050.00

per month, or $12,600.00 per year. If the benefit increase were to cause a doubling in Total and Permanent Disability claims, the cost of the increase would rise to $2,100.00 per month, or $25,200.00 per year. These relatively small increases in cost are reflected in Garrity's actuarial estimates that the proposed increase would have little effect on the Fund's financial health.

Though the proposed increase would double the Disability Benefit, taking it from $75.00 per month to $150.00 per month, that increase is less than total inflation since 1985, when the Disability Benefit was last raised. From the evidence showing the history of increases in retirement benefits and in the Disability Benefit, it appears that the proposed increase, less than cost-of-living adjustments since 1985, will maintain an approximately proportionate relationship between retirement benefits and the Disability Benefit.

There is merit in the argument of the Employer Trustees that disability benefits should be determined in the process of collective bargaining about terms and conditions of employment, thus enabling the Union and the several hospital operators to fit benefits to varying operating conditions. There is also merit in the argument of the Union Trustees that disability benefits should be determined under the Plan's process, thus assuring uniformity of the benefit, irrespective of which hospital a Union member works for.

I do not intend my decision in this matter either as an endorsement of the Union Trustees' "process" argument or as a rejection of the Employer Trustees' "process" argument. Though

I have authority to adopt either argument as a basis for decision, I do not. Whether disability benefits should be established in the collective bargaining process or in the Plan's process should be decided through negotiation between the Union and the hospital operators and not by an arbitrator.

Rather, my decision is based on my determinations 1) that Disability Benefits should remain in the Plan because they have been provided there since the Plan's inception, 2) that the proposed increase will, as a cost-of-living adjustment, approximately maintain the historic relationship between retirement benefits and the Disability benefit, 3) that the proposed increase will remedy the attenuation of the Disability Benefit that has occurred since 1985, 4) that the proposed increase will have a negligible effect on the Plan's financial health, and 5) that the increase in the Disability Benefit will not cause a significant decrease in the capacity of the Plan to pay retirement benefits.

AWARD

I cast my vote as arbitrator in favor of the motion to increase the Plan's Total and Permanent Disability Benefit from $75.00 per month to $150.00 per month, as of January 1, 2012. The parties shall amend the Plan accordingly.

January 7, 2013

Thomas P. Gallagher, Arbitrator