## IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

| | | |
|---|---|---|
| **CITY OF STILLWATER** | ) | **BMS NO.13-PN-0018** |
| **"CITY"** | ) | **DECISION AND AWARD** |
| **LAW ENFORCEMENT LABOR SERVICES LOCAL 257** | ) | **RICHARD R. ANDERSON** |
| | ) | **ARBITRATOR** |
| **"UNION"** | ) | |
| | ) | **MAY 7, 2013** |

## APPEARANCES

**For the Union:**

Adam Burnside, Business Agent
Chris Crane, Union Steward
David Wulfing, Union Steward
Brian Bruchu, Assistant Union Steward

**For the City:**

Susan K. Hansen, Attorney
Larry Hansen, City Administrator

## JURISDICTION

Pursuant to the provisions of the Minnesota Public Employment Relations Act (PELRA),[1] Bureau of Mediation Services (BMS) Commissioner Josh Tilsen certified the following issues in dispute to interest arbitration in a letter dated October 29, 2012.

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[1] Minn. Stat. Sec. 179A.16, Subd. 2.

**1. Wages - What amount, if any, should the General Wage Increase be for 2012? - Appendix A**
**2. Wages - What amount, if any, should the General Wage Increase be for 2013? - Appendix A**
**3. Wages - What amount, if any, should the General Wage Increase be for 2014? - Appendix A**
**4. Health Insurance - What amount should the Health Insurance Contribution be for 2012? - Art. 21. 1 and 21.2**
**5. Health Insurance - What amount should the Health Insurance Contribution be for 2013? - Art. 21.1 and 21.2**
**6. Health Insurance - What amount should the Health Insurance Contribution be for 2014? - Art. 21.1 and 21.2**
**7. Court Time Cancellation – If Court is cancelled, what amount should the Officer be compensated? - Art. 13**
**8. Longevity - What amount, if any, should longevity be increased? - Art. 22**

The undersigned Arbitrator, being duly appointed as an Arbitrator under the auspices of the BMS, was notified of my selection as the neutral arbitrator in this matter by the City Counsel Susan K. Hansen in a letter dated March 6, 2013. A hearing was held on April 18, 2013 in Stillwater, Minnesota. The parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced and received into the record. During the course of the hearing, the parties indicated that Issue 6 Court Time and Issue 7 Longevity had been resolved and stipulated that the remaining aforementioned Commissioner-certified issues were properly before the undersigned Arbitrator for final determination.[2] The record was closed on May 3, 2013 after the Arbitrator received the parties' timely post-hearing briefs.

## BACKGROUND

The City of Stillwater, hereinafter the City or Employer, is the county seat of Washington County located in east central Minnesota, and one of the seven counties that comprise the Twin

[2] The Union withdrew those proposals on April 8, 2013 (City Exhibit 6).

Cities metropolitan area. The City has a population in excess of 18,000 residents. The County has approximately 71 employees. Seventy employees are represented in six bargaining units. There are two non-essential units (35 employees) and four essential units (35 employees) (*City Exhibit 37*). There is one unrepresented employee who holds the position the City Administrator.

The American Federation of State County and Municipal Employees (AFSCME) union represents 18 non-essential employees in the Clerical and Professional unit. The International Union of Operating Engineers Local 49 (IUOE) represents 17 non-essential employees in the Public Works' unit. The Firefighters Association (FFA) represents seven essential employees in the Fire Fighter unit. Teamsters Local 320 represents 10 essential employees in the Public Manager unit. An LELS sister local represents five essential employees in the Sergeants' unit. The Union represents 13 essential employees in the Patrol Officer unit, hereinafter Officer.[3]

The parties have entered into a series of collective bargaining agreements since the early 1990's. Prior to this, the unit was represented by Teamster Local 320. The last negotiated Agreement was effective from January 1, 2010 through December 31, 2011. The parties are currently operating under the provisions of said expired Agreement pursuant to Minn. Stat. Sec. 179A, Subd.4. A predecessor Agreement effective from January 1, 2008 through December 31, 2010 was resolved through interest arbitration, *City of Stillwater and Law Enforcement Labor Services, Inc. Local 257, BMS Case No. 08-PN 0266 (Charlotte Neigh, October 31, 2008)*. The parties' January 1, 2004 through December 31, 2006 contract was also resolved through interest arbitration, *City of Stillwater and Law Enforcement Labor Services, Inc. Local 257, BMS Case No. 04-PN 0359 (David S. Paull, December 23, 2004 )*.

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[3] Twelve of the 13 Officers are at the Top Patrol wage level. The Officer compliment will increase to 14 when a newly hired Officer comes on board as a replacement to a recently promoted Officer.

The AFSCME Clerical and Professional unit has accepted the City's 2012-2014 wage offers proposed to the Union of 0%, 2%, and 2%. AFSCME has also accepted the City's 2012, 2013 and 2014 monthly health insurance offers of $1,086.86, $1,121.86 and $1,141.86 proposed to the Union. The IUOE Public Works unit has accepted the City's 0% wage offer for its one-year (2012) contract. In this one year contract the IUOE represented employees were allowed to enroll in their union's health insurance plan rather than the City's health insurance plan. The City's monthly reimbursement costs are $949. The non-union City Administrator accepted the wage and health insurance 2012-2014 packages accepted by the AFSCME unit and proposed to the Union. At the time of the hearing, none of the other essential units have settled wage and health insurance issues for 2012-2014 while the IUOE has not settled these issues for 2013 and 2014.

## OPINION AND AWARD

### ISSUES 1-3—WAGE INCREASES FOR 2012, 2013 AND 2014—Appendix A

**The existing language:**

Employees covered by this AGREEMENT shall be compensated for each full month of service in accordance with the following schedule and provisions:

*Effective January 1, 2011, the following monthly rates shall apply:*

**Effective January 1, 2011**

| | |
|---|---|
| Start | 70% of Top Patrol |
| After 6 months | 75% of Top Patrol |
| After 12 months | 80% of Top Patrol |
| After 24 months | 90% of Top Patrol |
| After 36 months | $5,313.69 (Top Patrol) |

**Union's 2012-2014 Wage Proposals:**

The Following wage schedule shall be in effect:

| | Effective January 1, 2012 | Effective January 1, 2013 | Effective January 1, 2014 |
|---|---|---|---|
| Start | 70% of Top Patrol | 70% of Top Patrol | 70% of Top Patrol |
| After 6 Months | 75% of Top Patrol | 75% of Top Patrol | 75% of Top Patrol |
| After 12 Months | 80% of Top Patrol | 80% of Top Patrol | 80% of Top Patrol |
| After 24 Months | 90% of Top Patrol | 90% of Top Patrol | 90% of Top Patrol |

After 36 months (Top Patrol) $5,473.10 $5, 637.29 $5,806.41
(This computes to wage increases of 3% for each year of the three-year contract.)

**City's 2012-2014 Wage Proposals:**[4]

On March 28, 2013, the City proposed the following wage increases (*City Exhibit 5*):

1. 0.0% general wage increase effective January 1, 2012
2. 2.0% general wage increase effective January 1, 2013
3. 2.0% general wage increase effective January 1, 2014

## UNION POSITION

### Ability to Pay

The Union's position is that the City has adequate resources, is in sound financial health, and therefore, has the ability to pay its wage proposals. In support of this the Union argues that it agreed to 0% wage increases for the duration of the 2010-2011 Agreement because of uncertainty of the City's economic condition at that time. Since the beginning of 2012, the economic picture has improved in the State and outpaced national economic growth. The State has also returned to pre-recession levels with higher per capita personal income and lower unemployment rates. The latest figures show that the State unemployment rate is 5.5%, among the lowest in the country. The unemployment rate is even lower in Washington County and now sits at 3.3%.

According to the City's 2011 Comprehensive Annual Financial Report (*Union Exhibit 37*), the assets of the City exceeded its liabilities at the close of the most recent fiscal year (2011) by $101,867,908 (net assets). Of this amount $6,953,609 (unrestricted net assets) may be used to meet the City's ongoing obligations to citizens and creditors in accordance with the City's fund designations and fiscal policies. The City's total net assets increased by $3,857,562 during 2011. As of the close of the 2011, the City ended up with a general fund balance of $4,168,198 of which $3,112,690 (unassigned fund balance) is available for use within the City's policies. The unassigned fund balance was 49% of total general fund expenditures at the end of 2011, well within the 35% to 50% parameters recommended by the State Auditor.

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[4] The City's initial proposal on November 13, 2012 was for wage increases of 0%, 1½% and 1½% for the three year contract.

The City of Stillwater's total bonded debt decreased by $4,240,000 (15 percent) during the 2011 fiscal period. The key factor to the decrease was the annual payment of debt service and the early call and payment in advance of the stated maturity of the General Obligation Bonds, Series 2003B.

When comparing the cost difference of the two wage proposals, we see the City is proposing an additional increase of $65,371.10 for the three years of the contract (*Union Exhibit 47*). The Union's proposal adds an additional $43,374.82 to this total for three years, which is just over 1% of the fund balance for 2011.[5]

In its presentation, the City attempts to paint a dire financial picture. Their arguments fall flat for a number of reasons and should be dismissed by the Arbitrator. The City argues that it has been negatively impacted by legislative decisions, but didn't provide any information as to why or how the City has been impacted in any way that is out of the norm for all suburban cities in the metro area. In fact, the City attempts to argue that they receive no LGA, when their own exhibit (*City Exhibit 27*) shows the City receiving $174,580 for 2010, 2011, and 2012. According to the testimony of City Manager Larry Hansen, they also will receive this same amount for 2013.

The City attempts to show how poorly they are positioned with comparison cities. City Exhibit 54 shows Stillwater being below the average on revenues, while at the same time exceeding expenditures of the group average (*City Exhibit 55*). It is astonishing that the City fails to provide the Arbitrator with the average for two very important pieces of information—Median Value of Owner-Occupied homes (*City Exhibit 57*) and Per Capita Income (*City Exhibit 59*). Even cursory examination of these two exhibits shows that on average home values in the City greatly exceeds the group, with only four cities having a higher average.

When it comes to wages, only two cities in the comparison group have a higher per person income (*City Exhibit 59*). Yet in this city, with a population earning an income that

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[5] Consideration here was focused on base wages and does not factor in longevity, education incentive, and differential pay or roll-up costs such as PERA contributions, Medicare taxes, etc. However, this should be of little consequence, as the ratio between the two final positions will remain nearly identical: as one raises, so too does the other (*Union Exhibit 48*).

ranks near the top and far exceeds the average, and living in houses that rank near the top in value, the Officers are dead last in their comparison group. This is simply wrong, and the Union urges the Arbitrator to use his power to begin correcting this imbalance.

Additionally, it should be noted that the City never once argues that the additional wages in the Union's proposal is unaffordable. What they do attempt to do is argue that if the Arbitrator were to award the Union's position, it would have a waterfall or whipsaw effect on all other employee groups in the City.

Based on the foregoing, the City has the ability to pay the Union's requested wage increases for 2012-2014.

**Pay Equity**

The Union argues the City is currently out of compliance (recommended underpayment ratio of 80.0) for its male-dominated class of Patrol Officers (*Union Exhibits 40 and 44*). The City's wage proposals for the 2012-2014 contract reflect underpayment ratios of 63.2, 70.1 and 77.3 (*Union Exhibits 44-46*). Based on the Union's wage proposals, the underpayment ratio for the years 2012-2014 would be 70.1, 77.3 and 70.8 (*Union Exhibits 41-43*). The result is that even with the City's wage offer, the City would still not be in compliance with the Pay Equity Act. While it appears there is a pay equity concern, compliance with the Pay Equity Act would not be further impacted by the awarding of the Union's final position. In fact, the Union's final position has virtually the same impact on the underpayment ratio as the City's final position rendering any concerns over the impact of the Union's position moot (*Union Exhibit 39-46*).

**Internal Equity**

The Union argues that the City has a history of deviating from an internal wage pattern (*Union Exhibit 25*). In 2006, the City Administrator received a wage increase of 4.75% while all other City employees received 3%. The Sergeant's unit received 4% and five of the employees in the Public Managers bargaining unit received market adjustments greater than the 3% other City employees received in 2007. In 2008 the AFSCME Library employees received 0%, while all other City employees received 3% in 2008. They also received 0% in July 2009 while other City employees received .025%. Further, for 2013 three library employees will receive 1% while the other three in the unit will receive 2% (City Exhibit 49A).

Only two units (AFSCME Clerical and Professional and IUOE Public Works) comprising 50% of represented employees have settled for 0% increase in 2012.[6] Only the AFSCME Clerical and Professional unit comprising 26% of the represented employees has settled wage increases for 2013 and 2014.

In the 2008 Interest Arbitration before Arbitrator Neigh, the City argued that its "internal pattern" was not deviated from, except for wage adjustments for employees who were 3.2% to 9.7% below the market average (*Union Exhibit 28, page 4*). Officers now find themselves in the exact same position as these other employees, and yet the City uses every excuse under the sun to dismiss the request. If it was acceptable in 2008, there is no reason it should not be acceptable in 2012 and beyond.

Based on the foregoing, the City has failed to establish any internal equity pattern of wage increases for its employees.

**External Equity**

The City is in the old Stanton Group VI for comparison purposes. Cities in the seven county Metro area with a population of between 10,000 and 50,000 residents comprise this group. According to the Union, there are now 27 cities in this comparison group (*Union Exhibit 32*). In 2006, Officers ranked 22nd in this comparison group (*Union Exhibit 35*). In 2011 Officers ranked 26th in this group for top patrol wage comparisons (*id*). The Officers were paid approximately $34/month less than top patrol officers in White Bear Lake, which was ranked 22nd in the comparison group (*id*). The City's 2012 wage offer of 0% continues to place the Officers at the bottom of the comparison group, approximately $139 behind 22nd ranked White Bear Lake's top patrol officers (*Union Exhibit 33*). The Unions 3% wage proposal would rank the Officers 19th, approximately $21 ahead of White Bear Lake top patrol officers (*Union Exhibit 34*).

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[6] Public Works unit employees received the 2% as a *quid pro quo* for the City allowing them to change their health insurance from the City plan to the IOUE plan.

In 2006 the Top Patrol Officer's monthly salary was $31.47 or 0.65%, below the average monthly salary for the 27 city comparison group. This disparity continues to increase; and with the City's 0% wage offer in 2012, that disparity amount would increase to $309.23, 5.82%, below the average salary of the comparison cities (*Union Exhibit 29*). By awarding the Officers 3% in 2012, albeit only $44 per month, the Officers will see an overall improvement in their ranking and closer to the ranking they received in 2006.

Pursuant to the Arbitrator's request, The Union furnished additional Top Patrol Wage Rankings charts involving the comparison cities for 2013 and 2014. They are being marked for the record as Union Exhibits 57-62. Exhibit 57 discloses that the Officers will rank 20th out of the 20 cities in 2013 reporting wage settlements based upon the 2% City's proposed wage increase for 2013, and 8th out of eight cities reporting settlements for 2014 based upon the City's proposed 2% wage increase for 2014 (*Union Exhibit 58).*

If the Officers were to receive the 0% wage increase the City is proposing in 2012 and were awarded a 3% wage increase that the Union proposed in 2013, the Officers would still rank 20th out of the 20 comparison cities that have settled for 2013 (*Union Exhibit 59*). If the Union's wage proposals of 3% for both 2012 and 2013 were awarded, the Officers would rank 15th out of the 20 settled cities in 2013 (*Union Exhibit 60*). With the City's 0%, 2% and 2% wage increases proposed by the City in 2012, 2013 and 2014, the Officers would rank 8th of the eight cities that have settled wage issues for 2014 (*Union Exhibit 61*) . They would in turn rank 7th if the Officers were awarded 3% in each year of the proposed contract.

In 2013 and 2014 the external settlements for top patrol officers in the comparison group are in the neighborhood of 2% each year. To award that amount would simply continue the wage disparity for the Officers while a 3% wage increase for those two years will allow the Officers to return to 2007 and 2008 comparison levels.

In the 2008 LELS Patrol Arbitration before Charlotte Neigh, the City argued that its "internal pattern" was not deviated from, except for wage adjustments for employees who were 3.2% to 9.7% below the market average (*Union Exhibit 28, page 4*). Officers now find themselves in exactly the same position as these other employees, and yet the City uses every excuse under the sun to dismiss the request. If it was acceptable in 2008, there is no reason it should not be acceptable in 2012 and beyond. The Arbitrator should not allow the City to simply move the target on a whim.

**Cost of Living and Other Economic Factors**

The Union argues that from 2007 through 2013 the Consumer Price Index (CPI) has increased 13.1% while total wage increases for the Officers has increased only 9.25%, a decrease of 3.85% in purchasing power (*Union Exhibit 26*). A review of the CPI for all Urban Consumers shows that there was a 3.2% general increase to prices in 2012, yet the City is not offering any wage increase.

The City attempts to diminish the external wage deficit by arguing that Officers rarely leave employment of the City, and that when positions are open, ample applicants are available. The information provided by the City is both flawed and misinterpreted. The City shows five employees have left the City since 2003 (City Exhibit 50). However, the City leaves off Officers Todd Bjorkman and Will Mayavski who left for St. Paul PD and Officer John Zizzo, who left for the Airport PD. All of the Officers save Scott Geving left for positions in other law enforcement departments (*City Exhibit 51*). In this Exhibit Chief John Gannaway states they receive 50-100 applications for positions, with only 25% having held other law enforcement officer positions. We can assume from this that the bulk of the applicants are individuals who are looking for their first job in law enforcement.

## CITY POSITION

**Ability to Pay**

The City's position is that it does not have the ability to pay the economic demands that the Union is making. The national economy slowed down in the first half of 2012 (*City Exhibit 15*), which continued into 2013 (*City Exhibit 16*) and slow growth is expected throughout 2013 (*City Exhibit 23 p.1*). The State is also experiencing economic pressures with a projected $627 million budget shortfall for the 2014-2015 biennium (*City Exhibit 23*).

A structural budget imbalance remains in Minnesota between revenue and expenditures. Revenues are increasing at only 3.9% but expenditures are growing at a rate of 5.4%. This structural imbalance is exacerbated by the fact that the State includes inflationary increases in its revenue forecast but excludes inflationary increases from its expenditure forecasts (*City*

*Exhibit 24, p. 10*). These structural budget imbalances will likely lead to ongoing budget deficits for the State.

Between LGA and Homestead Agricultural Credit Aid (HACA)[7] the City has lost approximately $2,500,000 in annual aid out of a general fund budget equaling $10,455,252, a 24% reduction.[8] Due to the State's budget crisis and politics, LGA has become an unpredictable source of funds and is no longer included in the City budget. The City has also lost significant funds in PERA Aid, Police State Aid, Police Training Aid, and Fire State Aid, with all varying from year to year.

Due to State law changes and the current economy, the City tax base has gone from having an increasing tax base to shrinking tax base thus stopping the City's growth. The City currently has little industrial base and the non-tax property in the City is at 30%. This has a net effect of driving up the City taxable tax capacity from a low of 46.478% to 61.121%, making it one of the very highest taxed cities in Washington County. In 2013, valuations and the market value homestead inclusion reduced the City tax base by 8%. Ten years ago the City revenue was 1/3 property tax, 1/3 LGA, and 1/3 fees, while today property tax is 71%.

In order to compensate for the revenue cuts, the City continues to be in a hiring freeze mode which started in 2010, and all new hires or replacements must receive City Council approval. The City has also reduced full time equivalents from 95 FTE to 70, a 26% reduction in staff. All capital purchases were frozen and require specific approval of City Council for purchases regardless of being in the approved budget. Capital bonding is now every other year, rather than every year. They are making vehicles and equipment last longer, but that drives up the expense of repair.

Further, the City has implemented franchise fees on gas and electricity, storm water management fees, signs and lighting fees and traffic impact fees to generate additional funds to increase revenue. It has also revamped maintenance procedures, from park mowing to snow plowing to do more with less.

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[7] LGA is direct State aid to local cities while HACA is property tax relief adopted by the State in 1998 that replaces the homestead credit.

[8] All of the ensuing data in this and the following paragraph is gleaned from City Exhibit 27.

However, many of the measures the City has taken to date are simply not sustainable on a long term basis and it anticipates budget increases in 2014 that the City will be unable to control or avoid. Due to the ways cities receive their funding, (twice per year) and 6 months after the start of the year, the City maintains it needs a cash flow balance of 50% of budget instead of the 49% it is now using.

Minnesota cities report their fund balances at the close of their fiscal year which ends December 31 when the fund balance is at its peak. Cities must rely on their fund balances to meet expenses during the first five months of the next fiscal year until they receive the first property tax payments in May. The false impression created by looking at only the December 31 fund balance has been addressed by State Auditor who stated, "*This creates an impression that cities have excessive amounts of revenue held in reserve. In reality, city fund balances should be relatively large at the end of the year because of local government cash-flow cycles.*" (*City Exhibit 30*).

The State auditor recommends that the amount of unreserved fund balance in the general and special revenue funds as of December 31 be approximately 35 to 50 percent of fund operating revenues, or no less than five months of operating expenditures. The City's December 31, 2011 fund balance, measured at its peak, was 43.7% of budgetary expenditures (*City Exhibit 31*).

Fund balances may be used for cash flow purposes to the extent the funds will be replenished when the property taxes are distributed or other revenue payments come in. The State Auditor does not recommend cities use fund balance to pay for on-going costs. It is a basic financial principle that ongoing costs are matched to ongoing revenue. Using a finite source of one-time money to pay ongoing costs is not sustainable. As the fund balance is a finite funding source akin to a savings account or 401(k)—once the money's gone, it's gone. The purpose of the fund balance, other than cash flow, is to provide an "emergency" source of funds for unstable revenues or unpredicted one-time expenditures such as floods. The nature of a one-time expenditure is that once the payment is made, all costs revert back to their previous level. However, in the case of wages, payments under the wage schedule of a collective bargaining agreement are permanent fixed costs and once the base has been raised through a general wage increase, it must be paid for every year.

Economic items in dispute also have a financial impact on the bargaining units not yet settled for years 2012 through 2014. Economic restraint and cost containment are clearly warranted given the current economic climate, the substantial impact of legislative changes on the City and the reductions in the City's resources.

Based on the City's costing model, the Union's position in this proceeding will cost $161,739 more than the cost of the City's final position (*City Exhibits 34-35*). For the 14 members of the LELS Patrol Officers unit, $161,739 represents 83.6% of the City's 2012 general fund levy increase ($193,359) (*City Exhibit 27*). These costs become fixed, permanent and ongoing costs. If the Arbitrator awards anything beyond the City's final position, it will have a significant ripple effect. The "cost" of an award in this proceeding will therefore be multiplied exponentially across the City. Because a 1.0% wage increase Citywide costs approximately $ 85,000, the Citywide cost of 3.0%, 3.0% and 3.0% wage increases in 2012, 2013 and 2014 would cost approximately $765,000. Such a cost is contrary to the current budget realities the City is facing and the need for fiscal prudence and financial sustainability. The remaining bargaining units that are not settled for 2012-2014 are essential units obviously waiting to see the results of the present interest arbitration.

**Pay Equity**

Pay equity is a critical internal factor in this proceeding. The City is currently not in compliance with the Equity Act (*City Exhibit 44*). The City's 2012 Pay Equity Report resulted in an underpayment ratio of 63.22%, which was well below the 80% required minimum (City *Exhibit 45, p. 4*). The City has not yet received notification from the Department of Employee Relations relative to its compliance with the Act. Failure to maintain compliance with the Act would subject the City to penalties in the form of withholding of state funds. The penalty amount is a 5.0% reduction in state aid or a fine of $100 per day, whichever is greater.

The Police Officer classification is a male-dominated classification. The wages for the Police Officer classification result in salaries above their predicted pay value by $211 per month. Any deviation from the City settlement pattern of 0.0%, 2.0% and 2.0% created by the AFSCME Clerical and Professional unit and positions in the City Library, which includes mostly female-dominated classifications, by providing the male-dominated Officer classification with greater increases creates exposure for Pay Equity noncompliance (*City Exhibit 46A*).

The Union presented computer-generated pay equity compliance reports at the hearing reflecting data from 2012. The Union's reports are inaccurate and do not accurately reflect the Library classification wages. The Union's position is contrary to the uniform settlement pattern established at the City and is contrary to the requirements of the Pay Equity Act. Consistency among all employee groups is of great importance in maintaining labor relations stability. To award general wage increases for the Officers contrary to what other bargaining units received as a result of negotiated settlements will encourage interest arbitration and undermine the collective bargaining process.

**Internal Equity**

The City argues that consistency in general wage adjustments is of great importance in maintaining labor relations stability. Internal consistency is of even more significance in times of limited financial resources. The City has historically maintained an essentially consistent general adjustment pattern between all employee groups. The only deviation from this internal pattern was a market adjustment for the City Administrator in 2006. In addition, the LELS Sergeants unit received 1% more than the other employees through interest arbitration.

The City's final position is identical to the internal uniform settlement pattern of 0.0% general wage increase for 2012, a 2.0% general wage increase for 2013 and a 2.0% general wage increase for 2014. The City has settled for 0% wage increase in 2012 with two of its six bargaining units including the AFSCME unit of 18 employees and Public Works unit of 17 employees. These are the City's two largest bargaining units that represent 50% of the City's workforce. The AFSCME unit also settled for a 2.0% general adjustment in 2013 and a 2.0% general adjustment in 2014. The 2012-2014 terms and conditions of employment have also been set for the one non-union employee with a 0% general wage increase for 2012, 2.0% in 2013 and 2.0% in 2014. There are no exceptions to this settlement pattern (*City Exhibit 38*).

The Union assumed the IOUE (Local 49) settled for 0% wage increase in 2012 as a "quid pro quo" for the change in the contract to allow members of Local 49 to drop the City's group health insurance effective January 1, 2013 and enroll in the Local 49 health insurance plan, but presented no testimony to support their supposition. Based on the terms of the contract between the City and Local 49, the City is contributing $942 per month toward Local 49 members' health insurance effective January 1, 2013 (*City Exhibit 68*). The City's settlement with Local 49 in 2012 results in a $ 179.86 per month, or $2,158.32 per year, savings for the City when comparing a Local 49 member with other City employees enrolled in dependent coverage through the City's group insurance plan.

**External Equity**

The City argues that any award be based on internal patterns rather than external comparison data. To the extent that external data is relied on it is important to look at the relative relationship of the City's demographic data such as population, expenditures, revenues, number of households and persons below the poverty level. The City has a population of 96.5% of the average Stanton VI comparison group yet its revenues are only 90.6% of the group (*City Exhibits 54-55*). In addition, the City has fewer households (*City Exhibit 56*) and a higher percentage of persons below the poverty level than the comparison cities (*City Exhibit 60*). Therefore, it is not appropriate to simply average the wages paid in the larger and wealthier cities to establish a bench mark wage rate for the Officers.

A 3% wage increase for officers in the comparison group for 2012, 2013 or 2014 is virtually unheard of. Only Champlin, Forest Lake, Northfield and Prior Lake officers received more than 2% in either year.[9]

The Union focuses on Arbitrator Neigh's 2008 arbitration decision to establish comparisons in order to advance its arguments. This arbitration was held long before the full impact of a recession was known. Since the fall of 2008, the City has lost approximately $2,500,000 in State aid representing 24% of the City's general fund budget (*City Exhibit 27*). At that time the City was financially able to make market adjustments for classifications that were more than 3.2% below the market average by also reducing the first step wage by 5%.

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[9] Champlin officers received 3% in 2012 with a 1% market adjustment rate on September 1, 2012 and 3.2% in 2013. Northfield officers received 0% on January 1, 2012 and 2.5% the following July for an effective yearly rate of approximately1.25%. Forest Lake Officers received 3% in 2012 and are unsettled for 2013 and 2014. Prior Lake officers received 2.5% for 2014.

In 2011 LELS, in bargaining with New Brighton, was able to eliminate longevity, educational incentives and payments tied to specialty groups, and add that compensation into its wage schedule (*City Exhibit P-1*). If you eliminate New Brighton's wage data, which is the highest in the group, from the comparison group, the average top patrol officer wage rate is reduced to $5,579 in 2012 and to $5,696 in 2013. The City's final proposal for those years results in the Officers receiving 95.2% of the average rate in both 2012 and 2013.

Some cities in the comparison group require four, six, or 11 years to reach top patrol pay while Officers reach this maximum in four years. An analysis of the wages paid to officers at four years of employment discloses that the City's proposal results in a maximum wage paid to Officers that is 96.3% of the average (*City Exhibit 65*).

The foregoing demonstrates that the Officers' wage schedule based upon the City's proposals is competitive with comparison cities.

**<u>Other Economic Factors</u>**

Attraction and retention is another component of market comparisons. The City has excellent attraction and retention in its Officers' unit. The Officer unit is comprised of long-term employees with all except one Officer being at the Top Patrol classification (*City Exhibit 50*). When the City had a recent vacancy, it received approximately 100 applicants with approximately 50% having four-year degrees (*City Exhibit 51*).

## DISCUSSION AND AWARD

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

Arbitrators in Minnesota generally consider the following factors in interest arbitration awards—employer's ability to pay, pay equity, internal equity, external equity, the cost of living and purchasing power; and other economic factors such as difficulty in hiring, turnover rates and retention rates. I intend to continue to follow these traditional factors in this Decision.

My role as an Arbitrator is to ensure that this Award is consistent with what the parties would arrive at if this bargaining unit had the right to strike or the City had the right to lock out the Officers if no agreement was reached at the bargaining table. I also need to ensure that this Award does not significantly alter the Officers' internal or external relative standing unless there are compelling reasons to do so.

Furthermore, I must ensure under PELRA that any Award I fashion does not conflict with compliance with the Pay Equity Act as measured by DOER. If pay equity were an issue, I would not hesitate to give even more weight to internal considerations.

The ability to pay was exhaustively covered by the parties both at the hearing and in their post-hearing briefs. Although these are not the best of economic times, the economy appears to be slowly recovering for all governmental units. While the City is not financially wealthy and has been on an austerity program, it continues to maintain a healthy unreserved fund balance. LGA funds were not included in the 2012 General Budget and are not included in its 2013 General Budget. The City received $174,580 at the end of 2012 and is set to receive $174,580 at the end of 2013. To make a long story short, the City should be able to finance my Award without resorting to levying increased property taxes on its property owners or cutting any City services. While there may be some fall-out on the other unsettled bargaining units, that impact is speculative. It is not known if any of the units could justify receiving the wage increases granted to the Officers.

Most arbitrators including the undersigned rely heavily on internal considerations when fashioning wage awards. The stronger the pattern in current contract proceedings, the greater the reliance on internal equity. Evidence presented by the City demonstrates that while there were explainable deviations, there is a history dating back to at least 2006 of most employees receiving the same yearly wage increase percentages. Evidence adduced also disclosed that while 50% of the employees received similar wage increases in 2012, only one bargaining unit comprised of approximately 25% of the employee compliment received the wage increases proposed by the City in 2013 and 2014. This in and of itself does not preclude internal equity as the dominate factor; however, it does lessen its impact in this Arbitrator's eyes especially for 2013 and 2014. With this in mind, external market considerations need serious consideration.

Evidence introduced by the Union demonstrates that in 2006 the Officers were ranked 22nd in wage ranking with other comparable cities and $15 per month short of being ranked 18th (*Union Exhibit 35*). In 2012 the Officers are at the bottom of the totem pole with a 0%

wage increase in comparison with other comparable cities and approximately $130 from being ranked 18th (*Union Exhibit 33*). The City's proposed wage increases of 2% in 2013 and 2014 will further diminish the Officer's ranking based upon the wage increases given to other comparable cities from 2012-2014 (*Union Exhibit 36 and City Exhibit 61*).

It is clear that the Officers were being left behind by the market place during the period 2006-2011. While the City's argument for a 0% wage increase based on internal considerations has merit, such is not the case for 2013 and 2014. The City's wage proposals for 2013 and 2014 continue to erode the Officers standing with other comparable cities.

In view of the foregoing, I will award the City's wage proposal of 0% for 2012 and the Union's wage proposals of 3% for both 2013 and 2014.[10] This will begin to restore the Officers comparable ranking to the 2006 level.[11] The additional cost for the City for the 13 Officers currently in the unit, excluding roll-up costs, for the two year period is approximately $25,000.[12]

**<u>ISSUES 4-6—HEALTH INSURANCE 2012-2014—ARTICLES 21.1 AND 22.1:</u>**

**Existing Article 21.1 language:**

21.1 Effective January 1, 2010, the EMPLOYER will contribute up to Eight Hundred Forty-nine Dollars and eighty-six cents ($849.86) per month, per employee toward group health insurance coverage, including dependent coverage.

**Union's proposal:**

21.1 Effective January 1, 2012, the City will contribute up to eleven hundred one dollars and eighty six cents ($1,101.86) per month, per employee toward group health insurance coverage, including dependent coverage.

**City's proposal:**

The City will provide the full single health insurance premium for the base plan for employees who elect single coverage.

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[10] It is not known what impact, if any, this Award will have on City's pay equity situation. Both parties paint a different picture on the impact. The best guess scenario is that an additional 1% for 2013 and 2014 will not exacerbate the City's pay equity situation.

[11] With the 3% wage increase, the Officers will currently rank 20th in 2013. This will undoubtedly be lowered once the remaining seven cities settle.

[12] This will be slightly higher when the new Officer comes on board.

Effective January 1, 2012, the City will contribute up to a maximum of $1,101.86 per month per enployee who elects dependent health insurance coverage.

Effective January 1, 2013, the City will contribute up to a maximum of $1,121.86 per month per employee who elects dependent health insurance coverage.

Effective January 1, 2014. The City will contribute up to a maximum of $1,141.86 per month per emloyee who elects dependent health insurance coverage. In no event shall the City contribute more than the premium cost.

**Existing Article 21.2 language:**

The EMPLOYER will pay one Hundred Percent (100%) of any increase in insurance premiums in 2011.

**Union's Proposal:**

The City will pay one hundred percent (100%) of any increase in insurance premiums in 2013 and 2014.

**City's Proposal:**

Delete Section 21.2

## Union Position

The Union argues that the City's proposal creates a near doubling of the cost of family health insurance over the preceding 6-7 years (*Union Exhibit 50*). For contract years 2010-2011, the bargaining group agreed to 0% wage increase in exchange for the City contributing the full amount of the increased health insurance premiums for 2011 (*Union Exhibit 49*). The Officer's monthly health insurance contribution costs were $444.14 for 2011 or approximately 29% of the total insurance costs (*Union Exhibit 50*). In 2012, the Officer's contribution declined to $413.14 resulting in a net total compensation gain for the year of $372.00 using the City's 0% wage increase proposal compared to $2,284.93 net total compensation gain using the Union's 3% wage proposal (*Union Exhibit 53*). The Officer's approximate health insurance costs in 2012 decreased to 27% using both the City's and the Union's health insurance proposals (*Union Exhibits 50 and 51*).

The Union is in agreement with the City that the health insurance contribution for the Officers will be a maximum of $1,101.86 per month. However, the City is attempting to change the wording of the contract language by separating out single insurance from family or single plus insurance. The Union opposes any change to the language and only looks for an increase to the City's contribution.

Current language for health insurance reads as follows: *21.1 Effective January 1, 2010 the EMPLOYER will contribute up to Eight Hundred Forty-nine Dollars and eighty-six cents ($849.86) per month, per employee toward group health insurance coverage, including dependent coverage.*

The City is requesting language that says it will pay the full cost of the base plan for single insurance. The Arbitrator should reject this change to the language for the simple reason is that it is not needed and the City provides no reason for the change other than to say it doesn't have any impact on singles. The City provides not one single justification for changing the language. It's not due to a federal or state law change or a change required by the insurance carrier. The fear of the Union is that this change, while having no impact currently, could have negative consequences down the road if attempts to change the base plan or if the premium cost to single insurance were to increase dramatically over the subsequent years. In this event, Officers could find themselves in an even worse situation than they are now with regards to insurance. If changes are needed in the future, the City is within its statutory right to negotiate changes with the Union. This change, however, is of no consequence currently and should be rejected by the Arbitrator.

The City is proposing to dramatically decrease the percentage of family health insurance it covers to an historic low percentage for 2013. The Officer's monthly contribution increased to $609.64 in 2013 (*Union Exhibit 50*). This results in a net total compensation loss for the year of $1,082.71 using the City's 2% wage proposal compared to $1,970.32 net gain using the Union's 3% wage proposal (*Union Exhibit 53*). The Officers' share of the 2013 health insurance costs rises to over 35% using the City's health insurance proposal and lowers to approximately 24% using the Union's proposal (*Union Exhibit 50*).

For comparison's sake, the Union has included what an equal splitting of 2013 dependent health insurance cost increases would do. Using the 50/50 split for 2013 the Officer's monthly share of the health insurance costs is $521.39, which is approximately 30% of the total costs (*Union Exhibit 52*). The impact on total net compensation for 2013 using the City's wage proposal would be $23.71, or an increase of $671.32 using the Union's 3% wage proposal (*Union Exhibit 54*).

The City is attempting to break with the historic relationship it has had with its Officers regarding health insurance. There have always been substantial increases to cover the added cost of health insurance premiums (*Union Exhibit 55*). Additionally, the City wants to limit the amount it pays for single coverage to the base plan (heretofore unnamed). This move is both unprecedented and not in keeping with the City Council's Resolution 2012-192, which puts no restriction on health insurance premium dollars for single policy holders (*Union Exhibit 55, last page).*

**Discussion and Award**

Internal equity is the prime consideration when formulating fringe benefit awards such as health insurance. I firmly believe that absent compelling reasons fringe benefits, especially health insurance contributions in the public sector, should be uniform throughout an employer organization.

There are not sufficient compelling reasons to justify higher health insurance contributions to the Officers than what the City has proposed. City employees have received the same health insurance contributions for many years. This carried over in 2012 when the Union accepted the City's proposed health insurance contributions that the settled bargaining units had already agreed to. The largest bargaining unit (AFSCME) has also agreed to the health insurance contributions proposed to the Officers for 2013 and 2014. The City succinctly points out that only one Officer will be impacted with increased health insurance costs for 2013. If this Officer decides to accept the Silver Plan instead of paying higher insurance costs, there will be no impact on the unit.

The Union argues that the City deviated from its universal health insurance pattern when the Public Works unit was allowed to drop the City's health insurance plan. Rather than looking at what plan employees have, it is the employee health insurance contributions that are relevant herein. The fact remains that this action was a culmination of the collective bargaining process and resulted in less City health insurance contributions to Public Works employees in 2013 than the City proposed to the Union.

In view of the foregoing, I award the City's health insurance contributions for 2013 and 2014.

The 2014 health insurance costs City-wide have not yet been determined. To establish City contributions now would be like rolling the dice for both parties. If health care costs increase substantially, all Officer wage increases for both 2013 and 2014 could be wiped out. If costs decline, the Officers could have a take home pay windfall associated with smaller health care costs. Thus, the fair and prudent course of action is to reserve any City health insurance contribution in 2014 to the collective bargaining process.

The City seeks to change the language in Article 21.1 in the new contract. I find that there is no substantive reason to do so. This is best left to the collective bargaining process. The Union seeks to retain Article 21.2 in the new contract; however, in view of the Award herein, Article 21.2 will be deleted.

## AWARDS

**Issue 1 Wage increase for 2012.** The City's proposal is awarded. There will be a 0% wage increase for 2012.

**Issue 2 Wage increase for 2013.** The Union's proposal is awarded. There will be a 3% wage increase in 2013.

**Issue 3 Wage increase for 2014.** The Union's proposal is awarded. There will be a 3% wage increase in 2014.

**Issue 4 Health Insurance for 2012.** The parties agree that the health insurance contribution will be $1,101.86 per month for 2012. The City's proposed language change to Article 21.1 is rejected. Article 21.1 will now read: *Effective January 1, 2012, the City will contribute up to eleven hundred one dollars and eighty six cents ($1,101.86) per month, per employee toward group health insurance coverage, including dependent coverage.* The City's proposal to delete Article 21.2 is awarded.

**Issue 5 Health Insurance for 2013.** The City's health insurance contribution proposal is awarded; however, its proposed language change is rejected. Article 21.1 will now read: *Effective January 1, 2013, the City will contribute up to eleven hundred twenty-one dollars and eighty six cents ($1,121.86 per month) per month, per employee toward group health insurance coverage, including dependent coverage.* The City's proposal to delete Article 21.2 is awarded.

**Issue 6 Health Insurance for 2014.** The parties will reopen the contract and negotiate health insurance contributions for 2014.

**Dated: May 7, 2013**

Richard R. Anderson

**Richard R. Anderson, Arbitrator**