

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR)
SERVICES)
LOCAL NO. 20) INTEREST ARBITRATION
) AWARD
)
Union,)
)
and)
)
CITY OF EVELETH, MN) BMS CASE No. 13PN0305
)
)
Employer.)

Arbitrator: Richard J. Dunn

Hearing Date: August 8, 2013
Place of Hearing: Eveleth City Hall
Post Hearing Briefs submitted: August 26, 2013
Date of Decision: September 13, 2013

Appearances:

For the Union: Ms. Kim Sobieck, LELS Business Agent
Mr. Brandon Elias, Union Steward, LELS Local No. 20

For the City: Mr. Mitchell J. Brunfelt, City Attorney, City of Eveleth
Chief Timothy H. Koivunen, Chief of Police, City of Eveleth
Ms. Jackie Monahan-Junek, City Clerk-Administrator,
City of Eveleth
Ms. Beth Peterson, City Councilor, City of Eveleth

JURISDICTION

The City of Eveleth, Minnesota and LELS Local No. 20 engaged in bargaining and mediation for a contract to be effective subsequent to the expiration of the present collective bargaining agreement that expired on December 31, 2012 and continues by operation of law. The parties, unable to resolve all issues, submitted their final positions to the Commissioner of the Bureau of Mediation Services (BMS) for arbitration.

Pursuant to the provisions of the Minnesota Public Employment Relations Act (PELRA),¹ Bureau of Mediation Services (BMS) Commissioner Josh Tilsen in a letter dated March 29, 2013 certified the following issues in dispute to interest arbitration.

1. Duration - Duration of CBA - Art.25
2. Wages Y1 - Wages 2013 -Appendix A
3. Wages Y2 - Wages 2014, If Awarded - Appendix A
4. Wages Y3 - Wages 2015 If Awarded - Appendix A
5. SL Employer Required Medical Exams - Payment for Employer Required Medical Exams - Article 5
6. Vacation Carryover - Date by Which Vacation Carryover Must Be Used - Article 5

¹ Minn. Stat. Sec. 179A.16., Subd.2.

7. Insurance Premium Y1 - Amount of Employer Insurance Premium Contribution, 2013- Article 10
8. Insurance Premium Y2 - Amount of Employer Insurance Premium Contribution, 2014, If Awarded - Article 10
9. Insurance Premium Y3 - Amount of Employer Insurance Premium Contribution, 2015, If Awarded - Article 10
10. VEBA Contribution Y1 - Amount of Employer VEBA Contribution 2013 - Article 10
11. VEBA Contribution Y2 - Amount of Employer VEBA Contribution 2014 - If Awarded, Article 10
12. VEBA Contribution Y3 - Amount of Employer VEBA Contribution 2015 - If Awarded, Article 10
13. Sick Leave - Requirement to Provide Documentation of Start and End Times of Health Care Provider Appointment - Article 5
14. VEBA Contribution - Date That Employer Contribution to VEBA is Due - Article 10

The undersigned arbitrator of the BMS roster was notified by Ms. Kim Sobieck by e-mail letter on May 10, 2013 of my selection as a neutral arbitrator. A hearing was held on August 8, 2013 in the City of Eveleth, MN City Hall. The parties were afforded a full and fair opportunity to present their case. Exhibits were introduced and received into the record. At the beginning of the hearing, the Union, Law Enforcement Labor Service ("LELS"), dropped its issue Number Five which had to do with payment of employer required medical exams.

There were the above 13 remaining issues to be resolved by the Arbitrator, because the parties have acknowledged they have reached impasse and cannot negotiate a settlement. The record was closed on August 26, 2013 after the Arbitrator received each party's timely post-hearing briefs.

BACKGROUND

LELS represents nine licensed peace officers in Eveleth, Minnesota. There were nine LELS Local No. 20 members including five police officers, three sergeants, and one lieutenant as of July 2013.

The City of Eveleth is on the Iron Range in St. Louis County at the intersection of highways 37 and 53 in northern Minnesota. The City Police Chief heads the Police Department. The City Administrator functions in an administrative capacity for the City. The population in 2012 was 3,697 individuals, which is a decrease of 4.3% from 2000.

The unionized employees of Eveleth are arranged in three bargaining units, including the LELS members, the American Federation of State County and Municipal employees (AFSCME members) representing public works employees and clerical staff, and Steelworkers representing City Department heads. The City Clerk-Administrator is the only non-union employee.

The last collective bargaining contract between the City and LELS Local #20 covered a two-year period from January 1, 2011 to December 31, 2012. (Exhibit One, Tab Two). The AFSCME unit has accepted a new three year contract covering January 1, 2013 to December 31, 2015. (Union Exhibit One, Tab 30) And the Steelworkers have completed negotiations with a signed contract for the January 1, 2013 to December 31, 2015 period. (Union Exhibit One, Tab 31) The City Clerk-Administrator salary and benefits are set by the City Council.

The last LELS arbitration proceeding was in 1979 when a decision was issued on November 24, 1979 by Arbitrator Francis E. Kapsch, Sr. (Exhibit One, Tab 33) (*LELS and City of Eveleth, BMS Case No.79-PN-940-A*)

ISSUE ONE: DURATION OF THE COLLECTIVE BARGAINING AGREEMENT (CBA)

The parties could not reach agreement as to whether the CBA duration should be for two or three years, beginning on January 1, 2013.

Union Position

The Union's position is for a two year contract for the period 2013-2014. The Union does not dispute that the other two internal bargaining units have agreed upon three year collective bargaining contracts. (Union Post-Hearing Brief, page 3). But it is argued that data is lacking for the third year, namely 2015, and that for law enforcement employees, external comparable data should weigh heavily. Other arbitration decisions are cited where arbitrators have cited why the marketplace should be considered above internal patterns. (Id., page 4)

The Union argues that stable labor relations will not be undermined with a two year contract, because negotiations for 2015 will not begin until the Fall of 2014. Furthermore the Union points out that ten of the 14 contracts since 1984 have been for two years, and only two were for three years. (Id., page 4)

Employer Position

The City position is for a three year contract for the period 2013-2015, which is the same three-year contractual period agreed upon with AFSCME and the Steelworkers. In the most recent two contracts, all three bargaining units have been on the same cycle, namely a one year contract in 2010, and a two year contract in 2011-2012. The City argues there is no basis to break this pattern, and refutes the Union argument that there is some uncertainty in the economy for extending a contract term through 2015. The City believes there is a "compelling internal pattern" for contract duration. (Employer Post-hearing Brief, page 11)

Decision

Labor relations will be enhanced for a longer period of time under a three year contract in contrast to two year contract. If the LELS unit were to work under a two year contract duration different from the cycle for the other two bargaining units, whipsaw bargaining would likely

occur. Furthermore, there is the criterion that many arbitrators refer to as efficiency in the conduct of bargaining. Efficiency is more likely under a three year contract duration, where the parties spend time negotiating every three years rather than every two years for the terms and provisions of the CBA.

Award

The City's position of a 2013-2015 duration for the CBA is awarded.

ISSUES TWO, THREE, AND FOUR: WAGE INCREASES FOR 2013, 2014, AND 2015

Union Position

The Union position is for general wage increases of 3.0 percent for 2013, 2.5 percent for 2014, and 2.5 percent for 2015. The historical internal pattern is an average general wage increase of 2.5 per cent annually over the past ten years, the Union claims. Furthermore, the Union argues that no strong pattern of consistent wage increases exists across the bargaining units. This is evidenced by the Union and AFSCME each receiving one percent general wage increase in 2011, while the Steelworkers agreed to one-half percent on January 1, 2011 and one-half percent on July 1, 2011. (Union Post-hearing Brief, page 6.) Again in 2012 the Union and AFSCME each received a one percent general wage increase and the Steelworkers received one-half percent on January 1, 2012 and one-half percent on July 1, 2012. (Id., page 6)

With regard to external comparisons, the Union argues that the traditional Group One Stanton cities in the Arrowhead region, namely Chisholm, Ely, Gilbert, Hibbing, Two Harbors and Virginia, should comprise the external comparables. The Union rejects the City excluding in its external comparison the City of Two Harbors, while including Hoyt Lakes, Grand Rapids, St. Louis and Itasca County. Furthermore, the Union rejects City Exhibit Ten because during the hearing the City did not identify the greater Minnesota cities included therein. (Id., page 8)

Union Exhibit 11-1 depicts the market average general wage increase as 2.25 percent in 2013 and 1.8 percent in 2014. (Union Exhibit One, Tab 11-1) The Union argues that Eveleth ranks first or second in wages only for the top patrol. But when longevity pay is added, the Union contends that the City ranks near last place. (Union Exhibit One, Tabs 11-2 and 11-3) Those cities which treat longevity as a percentage of wages rather than a static amount, pay a much higher wage, it is argued. When applying a percentage of wages, the longevity amounts increase along with general wage percentage increases. A higher than average wage increase is needed to make up for the impact of a static longevity amount for the Eveleth patrol officers. (Union Post-hearing Brief, page 9)

It is argued that the Union's proposal of three percent increase in 2013 will produce a one percent below average ranking, and a three percent increase for 2014 will result in a 1.5 percent below average ranking. In contrast, the City's proposals result in a 1.4 percent below average in 2013, and a three percent below average for 2014. (Id., page 10.) The Union also has depicted the ranking of cities when longevity pay is included. This shows that Eveleth's ranking among nine other comparison cities changes from second highest for police officers with five years longevity (as well as compared to the base wage only) to seventh highest with twenty or twenty-five years longevity. (Id., Attachment C) The Union believes that a higher than average general wage increase is warranted in 2013, 2014 and 2015.

With regard to cost of living data, the Union argues that wage increases should ensure the bargaining unit keeps pace with increases, and that further, the proposed Union increases will make up for the differences between the recent years of increased cost of living and the general wage increases actually received by the members of the Union. There was no increase in 2010 when the CPI-U was two percent, a one percent increase in 2011 when the CPI-U was 3.2 percent, and a one percent increase in 2012 when the CPI-U was two percent.

The Union argues that the City has the ability to pay for wage and benefit proposals, which for all three years total \$25,066.98. (Union Exhibit One, Tab 35) The Union presents evidence of this ability and claims that the City's financial position is strong and will continue to improve. There are citations to the City's 2012 Comprehensive Financial Report. The City's 2012 year-end fund balance of \$3.9 million exceeds the auditor's recommended amount of \$2.2 million, and the unassigned General Fund balance was \$3,696,134. (Union Post-hearing Brief, page 23) The Union therefore concludes that the City has the ability to pay.

Employer Position

The City proposed a general wage increase of 2.5 percent for 2013, 2.0 percent for 2014, and 2.0 percent for 2015. This is the same set of percentage increases in base wages as was agreed upon with the AFSCME and Steelworkers bargaining units in their settled contracts for 2013-2015.

The City argues that LELS has historically in recent contracts agreed to the same percentage base wage increases as the AFSCME bargaining unit, where they agreed to no increase for the 2010 contract, a one percent wage increase for 2011 and a one percent wage increase for 2012. (Employer Exhibit One, Tab 6, Exhibits 6C and 7C). The City argues that LELS and AFSCME have a history of identical base wage percentage increases. (Employer Post-hearing Brief, page 12.)

The Steelworkers somewhat deviated from this pattern when, instead of a one percent wage increase each year of the two year contract, the one percent increase was split into a January one-half percent increase and a July one-half percent increase each year of the 2011-2012 contract. The City argues that this does not constitute evidence that there are no internal wage settlement patterns in the City. This is not regarded as a significant deviation by the City. Moreover, in two of the last three contract cycles, all of the bargaining units agreed to the same wage settlements. The other bargaining units have agreed to 2.5 percent for 2013, 2.0 percent for 2014 and 2.0 percent for 2015.

With regard to external comparables, the City argues that their general wage proposal is in line and consistent with municipal police officer settlements across greater Minnesota and in the Arrowhead Region of Minnesota. (Id., page 13.) The City cites the Coalition of Greater Minnesota Cities average general wage increase data for police officer bargaining units of 1.68 percent for 2013, 1.69 percent for 2014, and notes that their proposal exceeds average wage settlements of other municipalities. (Id., page 13)

The City goes on to argue that on the Iron Range the average percentage base wage increases for police officer bargaining units are 2.1 percent for 2013, 1.4 percent for 2014, and 2.0 percent for 2015, and that the City's wage proposal for increases are "well above the regional average." (Id., page 13.) (Employer Exhibit One, Tab 11)

With regard to the longevity pay matter, the City refutes the Union argument that when longevity is factored into wage increases, the City underpays police officers. Moreover, the City cites that the only wage issue which was certified for determination by the Arbitrator is the amount of the base wage, and therefore the Arbitrator's jurisdiction on this matter does not exist. The City also notes that LELS never raised this longevity pay issue at any time during the negotiations, nor did LELS seek to certify the issue of longevity pay for interest arbitration. (Employer Post-hearing Brief, page 14).

The City further notes on this longevity pay plus wage comparison issue, that Eveleth Police Officers are among the highest paid compared to police officers in other municipal police departments across the Iron Range region. (Id., page 14) It is claimed the Eveleth police officers are the highest paid municipal police officers in the core Iron Range area, earning more than police officers in such larger cities as Virginia and Hibbing (Employer Exhibit One, Tab 11). The City also points out that Eveleth police officers are paid more than neighboring city police officers in Gilbert, Hibbing, and Virginia, and that some of these cities are several times the size of Eveleth. (Id., page 16.) It is argued that the Union has failed to meet the burden of proof on

this issue of external comparables as a more compelling matter than internal comparables and internal settlement patterns.

With regard to internal comparison of longevity pay, the City notes that Eveleth police officers have higher longevity pay than all of the other City employees. (Id. page 15.) AFSCME and Steelworkers employees negotiated increases in longevity pay, but the monthly amount still is less than that for the police officers. (Id. page 15)

The City asks the Arbitrator to consider other contract items which the City has already agreed to provide police officers. Such items include wage increases for rank differential pay and out-of-rank pay, allowing employees to take their vacation in one-day increments rather than four-day increments, and basing holiday pay on twelve hour shifts rather than eight hour shifts, as was the prior practice. This last item is claimed to cost the City an extra \$500 per year of pay for each employee., or approximately one percent of annual pay. (Id. page 17)

The City acknowledges it has the financial ability to pay wage increases, but cites Elkouri and Elkouri in its argument that internal comparables, internal settlement patters and external comparables should carry the greatest influence on the wage increase decision by the Arbitrator (Id., page 18).

Decision

Arbitrators in Minnesota typically consider numerous factors in their interest arbitration awards, namely internal equity and internal settlement patterns, external equity, pay equity, the employer's ability to pay during the contract period, the cost of living during relevant periods of time, and other economic factors. Arbitrators also attempt to make awards that represent the agreement that the parties in the bargaining unit of essential employees and the employer would have reached at the bargaining table if the bargaining unit had the right to strike or the employer could lock out. The undersigned is also cognizant of the need not to alter significantly the relative standing of bargaining units unless compelling reasons exist.

With regard to the State of Minnesota Bureau of Mediation Services Commissioner's certification of issues to be arbitrated, Commissioner Josh Tilsen certified "Wages" for each year of the proposed contract period in his March 29, 2013 Certification to Arbitration. The City interprets the certification as only applicable to "base wages", but the actual term certified was "Wages". The City refers to longevity pay as a "wage enhancement". Longevity pay was brought up in the negotiations and at the arbitration hearing, when the Union demanded a higher percentage general wage adjustment to compensate for the static amounts of longevity pay. The City discusses longevity pay at length in its Post-hearing Brief, and depicts longevity pay rates in a table of the Post-hearing Brief. (Employer Post-hearing Brief, page15). The City discusses wages with longevity pay factored into the top patrol rates, and how these compare with other regional cities. The undersigned does not agree to the Union's demand for a higher percentage general wage increase, or a change in the longevity increase from an absolute dollar amount to a percentage increase. But clearly the issues of general wages and longevity pay or "wage enhancements" were intertwined. Thus in this case, the Arbitrator will consider the longevity pay issue as integral to and subsumed in the issue of wages certified by the Commissioner for arbitration.

With regard to internal equity and internal settlement patterns, in this case it is relevant that two other bargaining units, AFSCME and the Steelworkers, have settled and written agreements with the City of Eveleth. The wage increases that they settled upon included increases of 2.5 percent in 2013, 2.0 percent in 2014 and 2.0 percent in 2015. The City has in this case offered the same percentage increases in each year to LELS, thereby establishing a consistent base wage pattern of percentage increases for the 2013-2015 period. This forms the internal settlement pattern.

These percentage increases are in line with those of other communities on the Iron Range.

In the past, the same percentage total wage increase was agreed to by LELS and the AFSCME bargaining unit. The Steelworkers have agreed in 2011-2012 to split a one percent increase in each year of that contract into 0.5 percent increases effective on January 1 and July 1, which

represents some deviation, but not a major one, from the other two-year contracts. An internal wage settlement pattern among the bargaining units has generally been followed.

It is relevant to note that the internal settlement pattern also includes an increase in longevity pay for AFSCME and Steelworker bargaining units. The City agreed to an increase in longevity pay of \$5.00 per month for the AFSCME bargaining unit and \$10 per month for the Steelworkers and \$10 per month for the Clerk-Administrator for each category of years of service. This has the effect of reducing the longevity pay differential between the LELS bargaining unit and the other two bargaining units as well as with the City Clerk-Administrator. This differential is now \$5 per month relative to the other two bargaining units, whereas the previous differential was \$10 between AFSCME and LELS. and \$15 between the Steelworkers and LELS.

The longevity pay component was raised by the Union during the hearing. The other bargaining units negotiated and received an increase in longevity pay, which is part of the general compensation of police officers as well. It was therefore a key topic of the hearing and the post-hearing briefs.

The City makes a strong argument for consistency in internal settlement patterns, citing the above history. The City claims its final position to LELS reflects exactly what the other two bargaining units have agreed to for percentage base wage increases. The City goes on to say "In other words, the City, in its final position, is proposing exactly what was offered to and accepted by all of the other employees in the City, nothing more, nothing less". But the reality is that more was offered to other employees in the City in the form of a "wage enhancement" of a five or ten dollar increase per month in the longevity pay component of compensation.² This was offered and agreed upon with each of the other two bargaining units and the City Clerk-Administrator. This *is* indeed more pay, in contrast to "nothing more, nothing less". (Id., page 11.) An increase in longevity pay for the patrol officers is consistent with the City's argument supporting internal settlement patterns among the bargaining units.

² Again, the City refers to longevity pay as a "wage enhancement" in its Post-hearing Brief, page 14)

The City also refers to the settlements with the other bargaining units as evidence that its wage proposal for 2013-2015 "constitutes strong proof and validation that the City's proposed wage package is entirely fair, reasonable and appropriate for the local public sector labor market". (Id., page 13.) Part of the package was the longevity pay increase, which must have been accounted for by the other bargaining units in their settlement and agreement.

Longevity pay and wages were treated together by the Union when comparing to the external market. (Union Post-hearing Brief, Attachment B, and Union Exhibit 11-3) The Union argues for a higher than average general wage increase to improve the comparative ranking with other Iron Cities when analyzing combined base wages and longevity pay. The Union indicates that a static dollar amount for longevity requires "a higher than average general wage increase to at least remain slightly below the external average of top patrol plus longevity." (Union Post-hearing Brief, page 10) This has led to the Union increase proposal of a three percent annual increase in wages.

Some longevity increase would help to retain the police officers in a competitive position in the local market. The average monthly wages with longevity in 2013 for nine comparison cities in the region (including Babbitt, Hoyt Lakes, and Grand Rapids) equals \$4360, compared to Eveleth under the City proposal of a 2.5 percent increase, which totals \$4288.55. With a \$10 monthly longevity increase, Eveleth top patrol officers are positioned at 98.6 percent of the average for nine cities. For the traditional group of companies identified by Stanton, Inc. for the Arrowhead Region, the average monthly wages with longevity in 2013 for the six cities (not including Babbitt, Hoyt Lakes and Grand Rapids) equals \$4348.80. With a \$10 monthly longevity increase, Eveleth top patrol officers would be positioned at 98.8 percent of the average for the six cities. This increase in longevity pay, together with the increases for rank differential and out-of-rank pay, and holiday pay based on twelve hour shifts, should produce a ranking close to the average for top patrol officers in these comparison cities.³

³ 1 Note that the City indicates that the extra pay for holidays will amount to \$500 per year per employee, which equates to approximately a one percent increase in pay. (Employer Post-hearing Brief, page 17)

This increase is in line with the City of Eveleth's ability to pay.

Award

The City base wage proposal is awarded for base wage increase percentages of 2.5 percent in 2013, 2.0 percent in 2014 and 2.0 percent in 2015. Additionally the award includes a \$10 increase in longevity pay for patrol officers in each category of years of service.

ISSUE SIX: DATE BY WHICH VACATION CARRYOVER MUST BE USED

The Union Position

The Union proposes to change past policy of the City to forbid Union employees to carry over any unused vacation into the next year. It is has been past practice for the City to deposit the value of unused vacation into the employee's post-retirement health savings account. The specific language that the Union proposed was as follows:

Effective January 1, 2013, up to 48 hour of earned unused vacation (at the end of each year) may be carried over to be used by the end of the subsequent year. Any earned unused vacation over 48 hours will be contributed to the employee's individual health care savings plan.

The Union notes that during negotiations, the parties agreed to allow up to 48 hours of earned unused vacation to be carried over. (Union Post-hearing Brief, page 12.)

Internal practice is for other bargaining units to carry over one year of unused vacation. There is no restriction to use the carry-over prior to year end. (Id. page 12.) Such restrictions, the Union argues, are not necessary because the Chief has control over when vacation can be used. (Union Exhibit Two, page 4.) The Chief can deny vacation requests according to when the "needs of the service will permit". Specifically the contract provides that "In determining vacation schedules, the wishes of the employee will be respected as to the time of taking vacation insofar

as the needs of the service will permit." (CBA, Article 5 - Vacation/Sick leave Section B in part) Moreover, the Union argues that an April 30 deadline for use is arbitrary.

The Union notes that the City did not introduce evidence of the possible increased cost that might result from a change in policy to allow carry-over to year-end rather than the City's proposed April 30 deadline for vacation carry-over use.

The Union cites market data to claim that vacation carryover is a standard practice and that a large number of vacation hours is standard as well. (Union Exhibit One, Tab 22-2) The cities of Virginia, Chisholm, Grand Rapids and Hoyt Lakes have provisions to carry over unused vacation indefinitely. (Union Exhibit One, Tab 22-1) (Employer Exhibit One, Tabs 12, 14)

The Employer Position

Past practice under collective bargaining contracts has been to prohibit police officers from carrying over their unused vacation from one calendar year to the next. The cash value of the unused vacation was instead deposited each year end into the employee's health care savings plan. (Employer Exhibit One, Tabs 6D, 1011-2012 CBA, page 5.)

The City during negotiations conceded to allow up to 48 hours of unused vacation to be carried over into the following year. But because the police department is small and is a round the clock operation seven days per week, the Police Chief wanted limitations on the vacation carry-over allowance so as to avoid difficulties in staffing all shifts. (Employer Post-hearing Brief, page 28.) The City therefore proposed an April 30 date by which unused vacation carried over must be used.

The language proposed by the City was as follows:

All amounts of earned unused vacation (at the end of each calendar year) will be contributed to the employee's individual health care savings plan, except that an employee may carry over up to a maximum of 48 hours of earned unused vacation into

the new calendar year as long as the carried over vacation is utilized by April 30th of that year.

The City regards this as a concession and an additional leave benefit.

Decision

The parties during negotiations agreed upon a carryover of up to 48 hours of earned unused vacation into the following year. This was a concession by the City. This is the first time that a CBA with LELS and the City of Eveleth would allow police officers to carry over unused vacation, because previous agreements specified that the cash value of any earned, unused vacation at year-end be deposited into the employee's health care savings plan. Police officers could not carry over unused vacation from one calendar year into the next.

The issue now is the date by which the carryover must be used. AFSCME and the Steelworkers can carry over one year's worth of unused vacation with no restriction as to the date by which the carryover vacation must be used. Numerous cities in the area allow vacation carryover with limits as to the amount of carryover of unused vacation, but without "use by" restrictions. (Union Exhibit One, Tab 22, Exhibit 22-2)

The Police Chief expressed concern about the staffing needs of the department. But he can currently deny vacation requests according to when the "needs of the service will permit". This gives him the authority to adjust vacation schedules and carryover usage. At the arbitration hearing, the Police Chief did not give any greater specifics as to factors that were key for limiting usage, other than general staffing needs during the shifts, and the possible payment of overtime for patrol officers filling in shifts for those using vacation carryover time. (Comments by Chief Timothy H. Koivunen at the arbitration hearing) The undersigned has observed other small in size police departments which have been able to manage these staffing issues where vacation carryover was a policy, particularly when the vacation requests were spread over the full year rather than a four month period. Thus there was no persuasive rationale advanced for the April 30th date as a deadline by which vacation needed to be used.

Award

The Union position is awarded to allow carryover into the following year of up to 48 hours of earned unused vacation to be used by the end of that successive year. The provision should read:

Effective January 1, 2013, all amounts of earned unused vacation (at the end of each calendar year) will be contributed to the employee's individual health care savings plan, except that an employee may carry over up to a maximum of 48 hours of earned unused vacation into the new calendar year provided that the carried over vacation is used by the end of that year.

ISSUES SEVEN, EIGHT AND NINE: AMOUNT OF HEALTH INSURANCE PREMIUM COST SHARING FOR 2013, 2014, AND 2015

ISSUES TEN, ELEVEN AND TWELVE: AMOUNT OF CITY CONTRIBUTION TO VEBA FOR CONTRACT YEARS 2013, 2014 and 2015

Union Position

The Union seeks no change in the City's contribution to health insurance premiums or to the City contribution to the VEBA, which is currently 80 percent of the amount of the deductible.. The Union objects to the City's proposal for lesser contribution rates to health insurance premiums and to the VEBA by the City, and for employees to make greater contributions.

In its argument, the Union contends that the City does not have a history of consistently granting the same health insurance benefits to employees, and therefore the Arbitrator does not have an internal pattern to follow on health insurance. (Union Exhibit One, Tab 23-3) The Union employees in 2010 paid \$40 a month for single coverage, and \$75 a month for family coverage from January to October. The rates changed to \$48.80 for single coverage and \$95.20 for family coverage beginning in November. The rates were the same for AFSCME employees but the

timing was different. The Steelworkers did not pay higher premiums in 2010. (Union Post-hearing Brief, page 14)

The Union also describes how AFSCME and Steelworkers contracts included incorporated health insurance agreements that contained additional terms and conditions. (Id, page 15.) Deductibles and out of pocket maxima could be increased each year based on inflation, and a reopener proviso could be triggered by a premium increase of more than twenty percent. The Union did not have such contractual provisions.

Furthermore, the Union contends that there is a lack of an internal pattern in 2011 and 2012 because of different reopener thresholds. LELS and AFSCME had a threshold of 15 percent for a health insurance premium increase reopener for 2012. (Union Exhibit one, Tabs 23-3, 30) The Steelworkers by incorporated health insurance agreements could reopen with a twenty percent premium increase. (Union Exhibit One, Tabs 23-3, 25,31, 32)

Another differing provision exists with regard to the "opt out" of group health insurance, where neither the Union nor AFSCME contracts contain an "opt out" provision, but the Steelworkers contract includes such a provision with a payment of \$300 for single opt out, and \$700 for family opt out. (Union Post-hearing Brief, page 15)

The Union, because of these differences, claims there is not a consistent pattern and that the Arbitrator can therefore fashion a fair and equitable award. According to the Union, the City carries the burden to demonstrate that the proposed change is necessary and reasonable. With this line of reasoning by the Union, there is lack of evidentiary support for the premium contribution changes proposed by the City. (Union Post-hearing Brief, page 15.)

The Union disagrees that the City's position is supported by external market data presented at the hearing, noting that the City did not provide evidence at this hearing supporting the reduced contribution. The Union called upon the City to acknowledge during the hearing that the

proposed one-half percent reduction per year in premium contributions and VEBA deductible contributions was arbitrary. (Id., page 16)

There is concern by the Union that a pattern of a reductions will be established with this series of changes in premium contributions and VEBA contributions by the City, particularly when the City during the hearing admitted it did not know how far the reductions would go into the future. Therefore the Union asks the Arbitrator to account for the impact of an award that establishes such a reduction pattern. The Union again asks for no change in the contract with regard to these contributions by the City. (Id., page 17)

Employer Position

The City has proposed a reduced contribution towards health insurance premiums of 92 percent in 2013, 91.5 percent in 2014, and 91 percent in 2015, with the balance paid by increasing employee contributions each year. The City contribution to the health insurance premium had been 92.5 percent of premiums in 2011-2012. These reductions in the City's contributions have been agreed to by the other two bargaining units, namely AFSCME and the Steelworkers, and the Clerk-Administrator. (Employer Post-hearing Brief, page 18-29)

The history behind these changes involves a study committee examining cost saving alternative to the City's traditional comprehensive major medical health insurance plan. LELS had representation on the study committee. As part of the conclusion of the study, the bargaining units and the City agreed to a new higher deductible plan beginning with the 2011-2012 contract. (Employer Post-hearing Brief, page 19) This VEBA plan called for the bargaining unit employees to pay 7.5 percent of the monthly health insurance premium, and the City to pay 92.5 percent monthly beginning in 2012. It also specified that the City would pay 80 percent of the annual deductible through an annual contribution of 80 percent into each employee's VEBA, and the employee would pay 20 percent of the deductible. (Employer Exhibit One, Tabs 6C, 6D 7C, 7D, 8C and 8D.)

The City proposed to LELS a schedule of reductions to the 2013-2015 VEBA where the City would contribute 79.5 percent of the single or family deductible in 2013, 79 percent in 2014, and 78.5 percent in 2015. This equates to a one-half percent reduction in each contract year, which equals \$18.50 per year for an employee with family coverage. (Employer Post-hearing Brief, page 20)

These reduction schedules for both the premium contributions and contributions by the City to the VEBA for each employee have been agreed upon with the two other bargaining units. The City therefore argues that the reductions which have been accepted by these bargaining units are fair, reasonable and appropriate for the local public sector labor market. (Id., page 21.)

The City also argues that these schedules of changes are strongly supported and sustained by external comparables, and that the amount which the City contributes toward employees' health insurance coverage is above market for cities and political subdivisions in northeastern Minnesota. At the hearing the City Attorney indicated the City regards the health insurance package "way to generous", and stated that the norm for other cities' contributions to health insurance premiums is typically 80 percent paid by the city, 20 percent paid by the employee, or 85 percent paid by the city and 15 percent paid by the employee, or 75 percent paid by the city and 25 percent paid by the employee. In its post-hearing brief, the City depicts a summary comparison of market employer contributions and employee contributions to health insurance, including the cities of Virginia, Grand Rapids, Hoyt Lakes, Chisholm, Ely, Babbitt, Gilbert, Hibbing, St. Louis County Sheriff's Deputies and Itasca County Sheriff's Deputies. (Employer Post-hearing Brief, pages 22-23.) The City states that this comparison reveals that Eveleth's contributions toward police officers' health insurance are very generous and comparatively near the top in the local labor market, even after the proposed reductions. Thus the City indicates the patrol officers are not under-compensated in terms of the paid health insurance benefits, and consequently there is no reason for the arbitration decision to deviate from the City's internal settlements.

With regard to the point made at the hearing that the Union never really agreed to the transition to the higher deductible VEBA health insurance plan in 2011-2012, and that therefore the City is prohibited from changing the premium costs and the VEBA contributions which were implemented in 2012, the City argues that LELS participated in the health insurance study and never objected to the implementation. The LELS did not object or grieve under the provisions of the collective bargaining contract any aspect of this change. In fact, the employees of the LELS bargaining unit accepted and used the annual contributions into the VEBA, according to the City, (Id. page 25.)

Further the City argues that the 2011-2012 contract Article 10, Section A confirms agreement and consent to the transition to the new VEBA plan. (Employer Exhibit One, Tab 6D, pages 7-8) (Id., page 25)

Finally the City asks that if the Arbitrator awards the City's position of the City VEBA contribution for 2013, then the award should account for the City's contributions to date during 2013 at the rate specified in the current collective bargaining contract. The contribution at the 2012 rate is \$1480 for single coverage, and \$2960 for family coverage, and at the proposed rate would have been \$1470.75 for single coverage, and \$2941.50 for family coverage. (Id., page 26)

Decision

The City has made a persuasive case to change the health insurance contribution rates and the VEBA contribution rates for LELS along the lines of a general internal pattern established with the other bargaining units in their 2013-2015 collective bargaining contracts. The City set up a study process involving representatives in the bargaining units, including LELS, during the study phase regarding health insurance. The City is attempting to address the health care cost issue through redesign of the plan, and shifting to employees more of the responsibility for health care cost management. This is part of a nationwide trend.

While there have been historical timing differences among the bargaining units in changing their premium amounts, and while the health insurance agreements contained different terms and conditions, different reopener thresholds, and different opt out provisions, the City can more efficiently and equitably manage this new health insurance plan if there is a common program of contribution rates to premiums and the VEBA, especially given the relatively small size of the City workforce. The patrol officers and other similarly situated employees with regard to health needs will have their health insurance administered according to a prevailing practice standard.

The external comparison data provided offers no reason to change this internal pattern established with the other bargaining units. The amount of employer contribution to health insurance premiums in Eveleth is still greater than in numerous other Iron Range comparison cities. Some cities such as Chisholm and Babbitt contribute only 50 percent after a specified maximum premium level. Nearby Virginia contributes 85 percent, Hibbing contributes 80 percent, and Gilbert contributes 90 percent.

With regard to the future contracts, the Union can negotiate any proposed changes to the City's contributions to health insurance premiums and the VEBA.

LELS has not challenged the implementation of the VEBA plan, and its members have knowingly used the City's contributions into the employees' VEBAs. It has therefore been an established part of the overall health insurance program.

With the award described below there needs to be an adjustment in the City's 2013 contribution to the VEBA to account for the difference in the amounts that have already been contributed and the correct contribution amounts. The City contributions during 2013 to the VEBA were \$1480 for single coverage, and \$2960 for family coverage, when they should have been \$1470.75 for single coverage and \$2941.50 for family coverage during 2013. These adjustments should begin in January 2014 and be completed by the end of the year.

Award

The City's position is awarded regarding health insurance premium contribution rates by the City of Eveleth of 92 percent in 2013, 91.5 percent in 2014 and 91 percent in 2015. The position of the City is awarded with reference to VEBA contributions rates of 79.5 percent in 2013, 79 percent in 2014, 78.5 percent in 2015.

Because the City has contributed more to the VEBA during 2013 by using the contribution rate specified in the 2011-2012 collective bargaining contract, adjustments should be made beginning in January 2014 and during the remainder of 2014 to account for the correct City VEBA contributions of \$1,470.75 for single coverage or \$2,941.50 for family coverage for patrol officers.

ISSUE 13: EMPLOYER REQUIREMENT TO PROVIDE PHYSICIAN'S NOTE FOR PHYSICIAN APPOINTMENTS

Union Position

The Union position on this matter is for no change in the contract, in opposition to the City's proposal for police officers to use sick leave for medical appointments and provide documentation from medical providers attesting to the start and end time of appointments. The Union argues that the City has no evidence of a problem, because no employee has ever been disciplined for misuse of sick time associated with a physician visit. During the hearing, the Union emphasized the importance of this issue, and the fact that no abuse by patrol officers has ever occurred.

The Union argues that the burden is on the employer to prove there is a definite problem that the proposed change in contractual language will effectively and efficiently resolve. It is not sufficient, the Union claims, to institute this provision for "just in case" situations. (Union Post-hearing Brief, page 20.)

The Union cites the existing contract language as satisfactory to require a physician's note for illnesses that are less than three days when there is "sufficient cause". (Union Exhibit One, Tab 2, Contract, Article 5, Section E)

Furthermore the Union contends that the proposal is unlawful because, while an employer may lawfully request that an employee provide a physician's note to substantiate sick leave usage, an employer must have a "policy or practice of requiring all employees, with and without disabilities to do so". The City does not have this policy in effect. (Employer Post-hearing Brief, page 20). The Union made a second claim that the federal Americans with Disabilities Act (ADA) prohibits inquiries that elicit disability-related information, The Union contends that a note from a medical provider may disclose disability-related information, such as a mental health condition, cancer or a sleep disorder. The argument is that the City has not offered evidence that a physician's note requirement is "job related and consistent with business necessity".

The Union also argues that the language possibly violates the federal Family Medical Leave Act (FMLA) which prohibits employers from interfering with, restraining, or denying the "exercise or the attempt to exercise" any rights under FMLA. (Id, page 21) The Union cites Jackson v. Jernberg Industries (677 F.Supp2d 1042), where the court held that it was an unlawful interference for the employee's FMLA rights to submit a physician's note for every FMLA absence. Therefore the Union claims that it is an unlawful interference with an employee's use of intermittent FMLA leave for the City to require a physician's note as is proposed.

Employer Position

The City seeks documentation of the start time and end time of the appointment for the purpose of discouraging post-appointment activities other than work activities - when the employee should be using other forms of paid leave time such as vacation or comp time. The City proposes language as follows:

When an employee requests sick leave usage for a medical or dental appointment during the employee's scheduled work hours, proof must be provided to the Chief of Police prior to approval of the employee's time sheet. Said proof shall include the start and end time of said appointment.

The City cites the agreement with AFSCME and the Steelworkers bargaining units on this issue, indicating that the language is meant to address fairly and reasonably those situations where employees have a medical appointment during work shifts, and elect to cover the absence with sick leave usage. The City claims the new contractual provision is intended to ensure proper usage of leave benefits with this new language, and is in no way intended to delve into the employee's substantive medical information. (Employer Post-hearing Brief, page 29-30)

Decision

The role of police is to enforce laws and provide for public safety in the community. They have a special role in society, placing themselves in harm's way daily to protect the public in the community in the course of law enforcement. They are entrusted by a sworn oath with this special role and responsibility. While two other bargaining unit employees have agreed to this proposed documentation provision, that is not proof that in the case of sworn patrol officers that the new language is reasonable.

There is no evidence presented by the Employer that in the City of Eveleth police officers have abused their responsibilities by misusing or wrongly communicating their time devoted to medical and dental appointments. There have been no disciplinary cases regarding time taken for health provider appointments. There is every reason to expect patrol officers to appropriately document their sick leave usage consistent with how they generally discharge their enforcement and compliance responsibilities. These enforcement and compliance responsibilities generally concern matters far greater in importance than the documentation of a medical provider appointment. The City has not met its burden of proof in the case of the police officers on this documentation matter.

Furthermore, the City already has the ability to require a physician's certificate for illnesses that are less than three days in duration when there is "sufficient cause". The City can require a physician's certificate. Article 5, Section E. Physician's Statements of the CBA reads as follows:

After three (3) days of sick leave absence, the Chief of Police shall require a physicians' certificate before any sick leave with pay is given and for less than three days absence, the Chief of Policy may require a physician's certificate with sufficient cause before any sick leave with pay is given.

The parties asked the Arbitrator for some guidance as to the meaning of "sufficient cause", although there is not an individual case in dispute with regard to patrol officers and documentation of health provider appointments at this time. To the undersigned, "sufficient cause" in the context relating to public employees relates to employee conduct that is deemed to be substantially unworthy, not legal, or improper in the administration of his/her authority, duties and responsibilities in the course of performing a public service job.

The City has not persuaded this arbitrator that the police officers of the City of Eveleth have not complied with the current sick leave policy provisions, or that there is a need for any further language such as has been proposed.

Award

The Union's position of no change in contractual language with regard to documentation of physician appointments is awarded.

ISSUE 14: TIMING OF VEBA CONTRIBUTIONS

Union Position

The Union position as to the practice of depositing the full amount of the VEBA contribution on January 1st of each year is to continue with no change in practice. The City proposes to make the deposit in two equal installments on January 1st and June 1st, as was agreed upon with the AFSCME and Steelworker bargaining units. LELS refutes the idea that an employee could receive the full amount of his/her VEBA on January 1st and then terminate employment with that benefit. This is not accurate because, the Union contends, an employee may request the deposit of more funds up to the full VEBA contribution upon proof of a health expenditure. Thus the City's proposed change to deposit one-half on January 1st and one-half on June 1st is not a compelling answer. (Union Post-hearing Brief, page 18.)

The Union objects that the City did not offer a quid pro quo for the change, and actually proposed a reduction of VEBA contributions by the City. (Id. page 18.) Moreover, the Union argues that by presenting a medical bill before depositing VEBA contributions, the employee is giving up a privacy right.

Finally the Union notes that there is a lack of an internal pattern in premium contributions, opt out provisions, and reopener thresholds - all demonstrating that health insurance benefits differ among bargaining units. Therefore there is not a compelling reason to change the dates of premium contributions to the VEBA. (Id., page 19)

Employer Position

The City seeks to make two installments of annual contribution amounts into each employee's VEBA with the first installment on January 1st and the second installment on June 1st, effective in the 2015 contract year. (Employer Post-hearing Brief, 26.)

The City desires to make this change so as to remedy a situation where employees separate early in the year and realize a windfall of the entire amount of the annual contribution to the VEBA. The City claims it has no viable way to recover these deposits, and they were not earned by continuing employment.

Hardship language is proposed by the City so as to authorize the City to contribute at an earlier date in the event of the employee incurring a large medical expense before the full amount of the contribution has been made to the VEBA. Such language was included with the agreement with AFSCME and the Steelworkers when they agreed to this provision, effective in 2015. (Id., page 27)

The City depicts the timing of other cities' annual VEBA deposits for Virginia, Hoyt Lakes, Chisholm, Ely, Babbitt, and Gilbert. (Id., page 27) All these cities make their deposits in quarterly or semi-annual or monthly installments. Five cities feature the hardship provision and Ely does not include it. (Id, page 27) Therefore the City concludes this provision is not out of the ordinary and is consistent with other contracts in the City.

Decision

As part of the health insurance program standardization and efficient administration, it is appropriate for the City to use common installment payment dates for the annual contribution amount into each employee's VEBA. Common dates have been agreed to with the other two bargaining units. The City has established January 1 and June 1 in the contracts with AFSCME and the Steelworkers bargaining units, with the implementation of these changes to begin in 2015. As the City has depicted in its exhibit of the timing of VEBA contributions as practiced in other cities in the region, it is common to find quarterly, monthly or biannual installment contributions to VEBAs. (Id., page 27)

The City has agreed to continue the hardship language for the protection of the patrol officers, whereby the City can expedite moving the balance of the VEBA contribution to an earlier date

for those employees who incur a large health deductible expense prior to the full contribution by the City to that employee's VEBA. This is a practice that has proven satisfactory in numerous municipalities.

Award

The award is for the City's position to change the timing of the City's annual contribution amount into each employee's VEBA to January 1 and June 1, effective with the 2015 contract year, and to include a hardship provision for earlier City contributions when necessary to cover a large incurred medical expenditure.

SUMMARY OF AWARDS

ISSUE ONE: DURATION OF THE COLLECTIVE BARGAINING AGREEMENT (CBA)

The City's position of a 2013-2015 duration for the CBA is awarded.

ISSUES TWO, THREE, AND FOUR: WAGE INCREASES FOR 2013, 2014, AND 2015

The City base wage proposal is awarded for base wage increase percentages of 2.5 percent in 2013, 2.0 percent in 2014 and 2.0 percent in 2015. Additionally I am awarding a \$10 increase in longevity pay for patrol officers in each category of years of service.

ISSUE FIVE: PAYMENT FOR EMPLOYER REQUIRED MEDICAL EXAMS

The Union withdrew this issue at the beginning of the arbitration hearing.

ISSUE SIX: DATE BY WHICH VACATION CARRYOVER MUST BE USED

The Union position is awarded to allow carryover into the following year of up to 48 hours of earned unused vacation to be used by the end of that successive year. The provision should read:

Effective January 1, 2013, all amounts of earned unused vacation (at the end of each calendar year) will be contributed to the employee's individual health care savings plan, except that an employee may carry over up to a maximum of 48 hours of earned unused vacation into the new calendar year provided that the carried over vacation is used by the end of that year.

ISSUES SEVEN, EIGHT AND NINE: AMOUNT OF HEALTH INSURANCE PREMIUM COST SHARING FOR 2013, 2014, AND 2015, and

ISSUES TEN, ELEVEN AND TWELVE: AMOUNT OF CITY CONTRIBUTION TO VEBA FOR CONTRACT YEARS 2013, 2014 and 2015

The City's position is awarded regarding health insurance premium contribution rates by the City of Eveleth of 92 percent in 2013, 91.5 percent in 2014 and 91 percent in 2015. The position of the City is awarded with reference to VEBA contributions rates of 79.5 percent in 2013, 79 percent in 2014, 78.5 percent in 2015.

Because the City has contributed more to the VEBA during 2013 by using the contribution rate specified in the 2011-2012 collective bargaining contract, adjustments should be made beginning in January 2014 and during the remainder of 2014 to account for the correct City VEBA contributions of \$1,470.75 for single coverage or \$2,941.50 for family coverage for patrol officers.

ISSUE 13: EMPLOYER REQUIREMENT TO PROVIDE PHYSICIAN'S NOTE FOR PHYSICIAN APPOINTMENTS

The Union's position of no change in contractual language with regard to documentation of physician appointments is awarded.

ISSUE 14: TIMING OF VEBA CONTRIBUTIONS

The award is for the City's position to change the timing of the City's annual contribution amount into each employee's VEBA to January 1 and June 1, effective with the 2015 contract year, and to include a hardship provision for earlier City contributions when necessary to cover a large incurred medical expenditure.

The parties are to be complimented on the comprehensiveness of their oral presentations at the hearing and in their post-hearing briefs.

Dated: September 13, 2013

Richard J. Dunn
Labor Arbitrator