

**STATE OF MINNESOTA**  
**BUREAU OF MEDIATION SERVICES**  
**IN THE MATTER OF INTEREST ARBITRATION BETWEEN**

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CITY OF GOLDEN VALLEY, MINNESOTA,

EMPLOYER,

-and-

LAW ENFORCEMENT LABOR SERVICES, INC

UNION.

ARBITRATOR'S AWARD  
BMS Case NO. 14-PN-0643<sup>1</sup>  
INTEREST ARBITRATION

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ARBITRATOR:	Rolland C. Toenges
DATE OF BMS CERTIFICATION TO IMPASSE:	March 18, 2014
DATE ARBITRATOR NOTIFIED OF SELECTION:	April 14, 2014
DATE OF HEARING:	August 25, 2014
DATE OF POST HEARING BRIEFS:	September 9, 2014
DATE OF AWARD	September 20, 2014

**ADVOCATES**

**FOR THE EMPLOYER:**

Scott Lepak, Labor Counsel  
Barna, Guzy & Steffen, Ltd.  
200 Coon Rapids Boulevard  
Coon Rapids, MN 55433-5876

**FOR THE UNION:**

Adam Burnside, Business Agent  
Law Enforcement Labor Services  
327 York Avenue  
St. Paul, MN 55130-4039

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<sup>1</sup> Cited is Minn. Stat. 179A.16, Subd. 7.

**WITNESSES**

George B. Gmach, Consultant, TruSight  
 Chantell Kmauss, Asst. City Manager  
 Stacy Carlson, Chief of Police  
 Tom Burt, City Manager

**ALSO PRESENT**

Steve Johnson, Sergeant, City of Golden Valley  
 Phil Finkelstein, Observer

**ISSUES IN DISPUTE**

**ITEM #1. Wages for 2014.**

**ITEM #2. Wages for 2015.**

**ITEM #3. Duration of Agreement<sup>2</sup>**

**ITEM #4. Court Time – Amount of Compensated Time – Article 13.<sup>3</sup>**

**ITEM #5. Holiday Time – Rate to be paid to employee called in to work on day off.<sup>4</sup>**

**ISSUES SETTLED BY THE PARTIES PRIOR TO HEARING**

1. ITEM #3. Duration of Agreement – 2014 and 2015.

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<sup>2</sup> The Parties stipulated that they had reached agreement on this issue and it was therefore withdrawn from the arbitration proceedings.

<sup>3</sup> This issue does not appear in the Employer's submission to the Commissioner, Bureau of Mediation Services, "Final Position On Issues In Dispute," but does appear on the Union's submission. The Employer's position is that this issue is not properly before the Arbitrator and is not arbitrable.

<sup>4</sup> The issue does not appear in the Employer's submission to the Commissioner, Bureau of Mediation Services, "Final Position of Issues In Dispute," but does appear in the Union's submission. The Employer's position is that this issue is not properly before the Arbitrator and is not arbitrable.

### **JURISDICTION**

The instant matter came on for hearing pursuant to a determination by the Commissioner, Minnesota Bureau of Mediation Services (BMS), that the Parties had reached an impasse in their attempt to negotiate an agreement setting forth certain terms and conditions of employment for years 2014 and 2015.

The Parties selected Rolland C. Toenges to arbitrate the issues in dispute and bring resolution to the matter.

Arbitration of the instant matter is being conducted in accordance with the provisions of the Minnesota Public Employment Labor Relations Act, as amended, 179A.01 – 179A.30 (PELRA). Under PELRA, 179A.16, the employees at issue are defined as “Essential Employees.” An impasse involving Essential Employees is required to be resolved via compulsory binding arbitration, as Essential Employees are barred from conducting a work action.

A hearing on the issues at impasse was conducted on August 25, 2014 in the offices of the City of Golden Valley, Minnesota. The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matters at impasse. Both Parties submitted voluminous binders in to evidence, containing documentation supporting their respective cases.

Being there was no request for other than conventional arbitration, the Arbitrator has the authority to award the final position of either party, or to fashion an award that the Arbitrator believes will best serve the interests of the Parties.

There was no request for a stenographic record of the hearing. The Parties agreed to submit Post Hearing Briefs on or before September 9, 2014.

## **BACKGROUND**

The City of Golden Valley (Employer) has a population of approximately 20,000 and provides traditional city government services, including law enforcement. The employees at issue, in the instant matter, are members of the City Police Department and are classified as Sergeant. The Employer, as of January 2014, has 135 employees in 62 job classes.<sup>5</sup> The employees consist of three job groups; Police Officers (20), Police Sergeants (6), and other employees (109.). Police Officers and Police Sergeants are in exclusively represented bargaining units. Other employees are not in an exclusively represented bargaining unit.<sup>6</sup>

Law Enforcement Labor Services, Inc. (Union) is the certified exclusive representative of “all licensed essential supervisory employees in the City of Golden Valley Police Department,” which currently consists of six Sergeants.

The bargaining impasse, leading to the instant case, occurred during the Parties negotiations for a collective bargaining agreement (CBA) succeeding their most recent CBA, which expired December 31, 2013.

The Parties have a lengthy history of collective bargaining. This is the first bargaining impasse that has been submitted for resolution via arbitration. Their most recent Collective Bargaining Agreement (CBA) was in effect from January 1, 2012 through December 31, 2013. The issues being arbitrated in the instant matter will be part of a CBA effective January 1, 2014 through December 31, 2015.

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<sup>5</sup> Exhibit E-7.

<sup>6</sup> Exhibit E-8.

**ISSUES TO BE ARBITRATED**

ITEM #1, Wages for 2014 – amount of general increase. Article 28

ITEM #2, Wages for 2015 – amount of general increase. Article 28

**ISSUE SETTLED PRIOR TO ARBITRATION HEARING**

ITEM #3, Duration – Length of Contract, Article 31<sup>7</sup>

**ISSUES WHERE ARBITRABILITY IS IN DISPUTE**

**ITEM #4, Court Time – Amount of Compensated Time – Article 13**

**ITEM #5, Holiday Time – Amount of Compensation – Article 19**

**DISCUSSION REGARDING ARBITRABILITY:**

The Employer argues that Items #4 and #5 are not properly before the Arbitrator because the Union resurrected these items after the Employer believed they had been settled. Notwithstanding the Employers objection, these items are included in the issues “Certified to Arbitration” by the Commissioner, Bureau of Mediation Services. In the Certification Order, the Commissioner commented:<sup>8</sup>

“If an issue was pursued by either party during the mediation process and remains unresolved at the time of certification, it will be listed as an issue in dispute. The Bureau does not make legal arbitrability determinations in the listing of issues. Questions of arbitrability are determined by the Arbitrator.”

The record shows that the Employer communicated its concerns to the Commissioner, noting the following:<sup>9</sup>

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<sup>7</sup> The Parties stipulated at the hearing that this matter had been mutually resolved.

<sup>8</sup> Exhibit E-20, C1.

<sup>9</sup> Exhibit E-4.

“As the mediator will note, the City objected to these issues being raised in mediation given that they were dropped in negotiations by the Union. Pursuant to Minn. Stat. Sec. 179A.16, Subd. 2, the Bureau may only certify matters where the commissioner “believes that both parties have made substantial, good faith bargaining efforts and that an impasse has occurred.” I have attached a copy of the City’s notes showing that both issues were either dropped or withdrawn by the bargaining unit on the dates noted and prior to mediation. The City respectfully submits that the Union did not engage in good faith bargaining efforts on these issues were they were dropped/withdrawn and then resurrected.”<sup>10</sup>

The Union filed an objection to the Employers allegations set forth above in a letter to the Commissioner dated February 25, 2014. The Union reiterated its position that the disputed items were properly certified to arbitration and the decision with respect to their arbitrability be left to the arbitrator.<sup>11</sup>

The Parties presented opposing arguments regarding whether the issues of Court Time and Holiday Time were settled in negotiations. The Employer believed these issues were dropped, but it is inconclusive from the evidence and testimony whether this is the case. The Employer’s bargaining notes indicate that it believed the Court Time matter was dropped when the Employer mentioned it “could look at shorter [?].” However, there is no evidence that there was any further proposal by the Employer or acceptance by the Union.<sup>12</sup> Although the Employer’s bargaining notes refer to Holiday Time as being “dropped,” it is inconclusive from the record that this was by mutual agreement. Although it may be considered contrary to a constructive bargaining relationship, it is not impermissible to resurrect an item previously discussed until such time as agreement is reached on all issues.

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<sup>10</sup> Exhibit U-6.

<sup>11</sup> Exhibit E-5.

<sup>12</sup> Exhibit E-4.

**AWARD ON ARBITRABILITY ISSUE**

**Items #4 and #5, as certified by the Commissioner, Bureau of Mediations services, are subject to being arbitrated in the instant proceeding.**

**FINAL POSITION OF THE PARTIES**

**UNION POSITION, ITEMS #1 & #2:**

General wage increase of two and one half percent (2 ½ %) effective 01/01/2014.

Market adjustment of four percent (4%) effective 01/01/2014

General wage increase of two and one half percent (2 ½ %) effective 01/01/2015.

**EMPLOYER POSITION, ITEMS #1 & #2:**

General wage increase of two and one half percent (2 ½ %) effective 01/01/2014.

General wage increase of two and one half percent (2 ½%) effective 01/01/2015.

**UNION POSITION ON ITEMS #4 & 5#**

Article 13, Add – “An Employee who works the evening shift and is scheduled to appear in court between consecutive shifts shall receive a minimum of six (6) hours straight pay or pay at 1 ½ times the Employees’ pay rate for the actual number of hours spent in court, whichever is greater.”

Article 19, Add – “An Employee called in to work a holiday on his or her scheduled day off will be compensated at the rate of two (2) times the Employee’s regular rate of pay.”

**EMPLOYER’S POSITION OF ITEMS #4 & #5**

Article 13, Amendment not arbitrable.

Article 19, Amendment not arbitrable.

## EXHIBITS

### UNION EXHIBITS:

- U-1. Background information – City of Golden Valley
- U-2. Bureau of Mediation Services (BMS) – Mediation Petition
- U-3. Employer’s submission to BMS of issues to be arbitrated
- U-3. Union request to BMS for revision of Employer’s list of issues to be arbitrated.
- U-4. Union’s submission to BMS of issues to be arbitrated
- U-5. BMS position regarding issues submitted for arbitration
- U-6. Union’s position on issues to be arbitrated in form of CBA language
- U-7. Employer’s position on issues to be arbitrated in form of CBA language
- U-8. Union request for pre-arbitration information from Employer
- U-9. Notice of Arbitrator selection
- U-10. Arbitrator’s notice of availability to conduct hearing
- U-11. CBA between City of Golden Valley and Sergeants – 2012-2013
- U-12. CBA between City of Golden Valley and Police Officers – 2012-2013
- U-13. CBA between City of Golden Valley and Police Officers – 2014-2015
- U-14. BEA News Release – Economic Data, July 30, 2014
- U-15. BEA News Release – Economic Data, August 1, 2014
- U-16. Graph, Domestic Product, 2008-2014
- U-17. Graph, Civilian Unemployment, 2007-2014
- U-18. Graph, All Employees – Total Nonfarm, 2008-2014
- U-19. Graph, St. Louis Fed Financial Stress Index, 2008-2014
- U-20. Narrative, St Louis Fed Financial Stress Index
- U-21. Minnesota Economic & Budget Outlook Improve
- U-22. Minnesota Management & Budget, Revenues Exceed Feb. Forecast
- U-23. Graph, Unemployment Rate in Minnesota
- U-24. Graph, Median Household Income in Minnesota, 2007-2012
- U-25. Minnesota Unemployment Statistics for June 2014
- U-26. Minnesota Unemployment Statistics for July 2014
- U-27. Golden Valley Monthly Crime Brief, September 2013
- U-28. City of Golden Valley Residential Study, Executive Summary
- U-29. City of Golden Valley, Comprehensive Annual Financial Report, Fiscal Year ending December 31, 2012.
- U-30. City of Golden Valley, 2014-15 Adopted Biennial Budgets
- U-31. City of Golden Valley, Maintaining a General Fund Balance
- U-32. Minnesota Revenue, LGA Amount by City
- U-33. City of Golden Valley, Pay Equity Report, 2014

- U-34. Guide to Understanding Pay Equity Compliance and Computer Report
- U-35. Consumer Price Index, All Urban Consumers – 12 Month Percent Change, 2010-2014
- U-36. Group #5 & #6 Cities – Difference Between Top Patrol and Top Sgt, 2012
- U-37. Group #5 & #6 Cities – Historic Difference Between Top Patrol and Top Sgt, 2001-2013
- U-38. Group #5 & #6 Cities – Top Wage Comparison With Longevity, 2012
- U-39. Excerpt From GV Police Officer CBA – Longevity Provisions
- U-40. Golden Valley Employee Handbook, A Guide to Personnel Policies
- U-41. City of Golden Valley Market Study Results, 2013l
- U-42. City of Golden Valley, Market Adjustments Needed.
- U-43. City of Golden Valley, Market Adjustment data sheets
- U-44. Comparison, Cities Left Out of Wage Study – Patrol Officer, 2012
- U-45. Search Results for Patrol Officer/Deputy Sheriff
- U-46. Cities Left Out of Wage Study – Sergeants, 2012
- U-47. Search Results for Police/Sheriff's Sergeant
- U-48. Total Wage Comparison, Sergeants and Patrol- All Metro Cities, 20,000-80,000 Populations
- U-49. Comparison of Impact of Wage Adjustment, 2014
- U-50. Total Cost Comparison – Union position versus Employer Position
- U-51. Collective Bargaining Agreement Between City of Bloomington, MN and LELS – Police Supervisors
- U-52. Collective Bargaining Agreement Between City of Coon Rapids and LELS – Police Sergeants.
- U-53. Collective Bargaining Agreement Between City of Burnsville and LELS - Police Sergeants.
- U-54. Collective Bargaining Agreement Between City of St. Louis Park and LELS = Police Sergeants.

#### EMPLOYER EXHIBITS:

- E-1. City of Golden Valley Demographics
- E-2. Quick Facts – Golden Valley Police Department
- E-3. CBA Between City of Golden Valley & LELS (Sergeants) 2012-2013
- E-4. Letter, 2/24/14, Employer to BMS – identification of issues at impasse
- E-5. Letter, 2/25/14, Union to BMS – Objection to Employer Letter of 2/2/14
- E-6. Email Exchange – Employer and Union Regarding Issues at Impasse
- E-7. City of Golden Valley – Notice of Pay Equity Compliance, 2014
- E-8. CBA Between City of Golden Valley & LELS (Police Officers), 2014-15
- E-9. Resolution Modifying General Wages and Salaries For Non-Union Personnel, October 15, 2013.
- E-10. Resolution, Establishing 2014 General Wages and Salaries For All Non-Union Personnel, December 17, 2013.
- E-11. Report – City of Golden Valley Market Study
- E-12. Result Data – City of Golden Valley Market Study

- E-13. Resolution, Amending The Labor Agreement Between Police Officers (LELS Local #27) And The City Of Golden Valley 2012-2013, 7/2/2013
- E-14. Data from 2013 Market Study on Sergeants by TruSight
- E-15. Market Data on Sergeants Provided By Union, 11/20/13.
- E-16. Market Data on Wage Differential Between Police Officer and Sergeant Provided By Union, 11/20/2013
- E-17. Bureau of Labor Statistics, CPI – 2004-2014
- E-18. Graph - City of Golden Valley Debt Service Funded By Taxes
- E-19. Golden Valley Fund Reserves Save On Umbrella Insurance Coverage
- E-20. Sergeant Pay Steps 2007-2013
- E-20, Sec C. Table of Contents, Issue Certification Documents
- E-20, Sec. C-1. Certification to Arbitration – Request for Final Positions, 3/19/2014
- E-20, Sec.C-2. Letter to BMS, Employer’s Final Position on Issues in Dispute, 3/12/2014
- E-20, Sec. C-3. Letter to BMS, Union’s Final Position on Issues in Dispute, 3/19/2014

THE UNION’S POSITION ON “WAGES” IS SUPPORTED WITH THE FOLLOWING:

- The economy is up as reported by the Bureau of Economic Analysis and other indicators:
  1. Personal income and disposal income is up .4 percent.
  2. Real Gross Domestic Product. 3 decimal up.
    1. Civilian unemployment rate is lowest in five years
    2. Employment exceeds pre-recession levels
    3. The financial stress index is lowest level since 2008
    4. Minnesota’s Economic & Budget Outlook Improve
    5. State revenues exceed February forecast (July 2014)
    6. Minnesota’s unemployment rate at 4.6% is among lowest in nation
    7. Minnesota’s household income is well above pre-recession levels
    8. Hennepin County’s unemployment rate is 4.2%.
- Crime rate in Golden Valley has decreased while traffic citations are up.
- Perceptions of Golden Valley Police Department are impressively solid.
- Ninety nine percent rate police protection as either “excellent” or “good.”
- Ninety five percent see the response time as “prompt.”

- Ninety three percent feel the Police Department personnel are courteous and act in a professional manner.
- Golden Valley Police Department is the one of the three most highly rated departments in Metropolitan Area.
- Internal and external comparisons support the Union's wage increase position
- The City has the ability to pay the additional cost of the Union's position.
- The City's unreserved fund balance of 54.5% is greater than the balance recommended by the State Auditor of 35 to 50%.
- At the end of 2013, the City had a general fund balance of approximately 58% of expenditures from the general fund.
- In 2014, the City received a \$219,081 increase in Local Government Aid from the State.
- Golden Valley is clearly in compliance with the Pay Equity Act.
- The overall increase in the rate of inflation has gone up 8.4% since 2010.
- Since 2010, the Sergeants wages have increased only 3.5%, resulting in a decrease in their purchasing power.
- The wage spread between Sergeants and Patrol Officers has decreased from 22% in 2012 to 19%, due to the Patrol Officers receiving a 4% market adjustment.
- When longevity pay is taken into consideration, the wage spread is at the bottom third of metro cities.
- Longevity pay, which starts at 3% when a Patrol Officer hits the top step, must be factored in to the wage comparison because it is real wages being paid.
- The Wage Survey completed by TruSight had built in inaccuracies
- The data used by TruSight was self reported and not verified.
- Some cities under 20,000 populations were included
- Somme cities in the 20,000-80,000 populations group were excluded.
- Longevity pay was excluded which creates skewed results.

- When factoring in longevity and viewing all cities above 20,000, the difference between patrol and sergeants are dramatically different.
- Because of the 4% wage increases, the hourly rate of a Patrol Officer can exceed the hourly rate of a Sergeant.
- The Union's is requesting the same general increase of 2 ½ % that was given all other employees, plus an additional adjustment similar to what nearly one half (approximately 60 employees) the other employees received.
- It was the 4% adjustment given to Patrol Officers in the fall of 2013 that disrupted the historic wage spread between them and Sergeants.
- The total two-year cost of the Union's position is \$67,408 compared to the City's cost of \$32,547, the difference representing only 0.33% of the City's fund balance listed in the Biennial Budget.
- Based on the total City Budget and the over \$9,000,000 in unreserved funds, the City has the ability to pay the Union's requested wages.

THE EMPLOYER'S POSITION ON "WAGES" IS SUPPORTED BY THE FOLLOWING:

- The Legislature has established standards for arbitration of interest disputes. Involving a class other than a balanced class, as defined under the Minnesota Pay Equity Act.<sup>13</sup>
- The Arbitrator's task is simplified in the instant case because there are no employee objections to the City's Pay Equity Study.
- In addition to equitable compensation relationships, the arbitrator is required to consider the extent to which:
  1. Compensation for positions in the classified civil service, unclassified civil service, and management bear reasonable relationship to one another.
  2. Compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivisions employment, and

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<sup>13</sup> See Minn Stat. Sec. 471.992, subd. 2 and Sec. 471.993, subd. 1 & 2.

3. Compensation for positions within the employer's work force bear reasonable relationship among related job classes and among various levels within the same occupational group.
- Reasonable relationships are defined as:
    1. The compensation for positions which require comparable skill, effort, responsibility, working conditions and other relevant work related criteria is comparable, and
    2. The compensation for positions which require differing skill, effort, responsibility, working conditions, and other relevant and work related criteria is proportional to the skill, effort, responsibility, working conditions, and other relevant work-related criteria required.
  - In interest arbitration, the principal, but not exclusive factor, relied upon by most arbitrators has been internal consistency with other settlements in the same jurisdictions.<sup>14</sup>
  - The Employer and Police Officers have settled a Collective Bargaining Agreement (CBA) covering 2014 and 2015, which provides for a two and one half (2 ½) percent increase in each of the two years.<sup>15</sup>
  - The Employer's non-union employees (109) also received a two and one half (2 ½) percent increase in 2014.<sup>16</sup>
  - The wage settlement with the Police Officers is the same as the Employer's position in the instant case with the Police Sergeants - 2-½% in 2014 and again in 2015.
  - Internal equity favors the Employer's wage position:

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<sup>14</sup> Cited is Faribault County and LELS, BMS Case No. 12-PN-1086, (Toenges, 2012), at page 23; City of Lino Lakes and LELS, BMS Case No. 12-PN-1175 (Dunn, 2012), at page 10; LELS and Dakota County, BMS Case No. 13-PN-0284 (Befort, 2013), at page 2; LELS and McLeod County, BMS Case No. 03-PN-612 (Kircher, 2003); LELS and Chicago County, BMS Case No. 95-PN-54 (Berquist, 1995); Ramsey County and LELS, BMS Case NO. 06-PN-096, (Anderson 2006).

<sup>15</sup>Exhibit E-8.

<sup>16</sup> Exhibit E-10.

1. The Employer's most recent Pay Equity Report shows the Sergeant class \$489.63 per month above predicted pay.<sup>17</sup>
2. Because Sergeants are already above predicted pay, it is important for internal equity to maintain this class at a level that does not increase the existing equity imbalance.
  - The Union must make a compelling case why the settlement pattern accepted by the vast majority of employees is not appropriate.<sup>18</sup>
  - The external market based wage adjustment received by Police Officers, which the Sergeants seek, was a necessary element of the Employer's obligation to look at external market and make adjustments accordingly.
  - While external market comparisons support the equity adjustment received by Police Officers, they do not support an equity adjustment for Sergeants.
  - If the external market based equity adjustment received by Police Officers were to be added to the Sergeants wage, the wage difference between Sergeant and Lieutenants would be lessened, as would be Lieutenants and Captain.
  - Based on the Union's position, the wage compression between Sergeant and Patrol Deputy would simply be transferred to Sergeant and Lieutenant. A modest amount of overtime would elevate the Sergeants at, or above, Lieutenants pay.
  - The effect of the Union's position strongly dictates in favor of the Employer's position, as does internal equity considerations.
  - External market comparisons support the Employer's position.<sup>19</sup>
    1. The Employer's policy is to pay about 66.7 % of the wage rate paid by a comparison group of employers, consisting of other cities in the

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<sup>17</sup> Exhibit E-7 at Job 41.

<sup>18</sup> Cited is Faribault County and LELS, BMS Case No 12-PN-1086, (Toenges, 2012) at page 23.

<sup>19</sup> Exhibits E-11 -14..

Metro Area with a population of 20,000 or higher, excluding Minneapolis and St. Paul.

2. A market study of the above referenced cities showed that a number of classes, including Patrol Officer, warranted a market rate adjustment.
  3. The external market study did not indicate a market adjustment for Sergeant.
- The external market data provided by the Union also does not support any external market based adjustment for Sergeants:<sup>20</sup>
    1. The Union's external market data shows Sergeants at 98% of the external market average.
    2. The Union's external market data shows the wage differential between Patrol Officer and Sergeant ranging from 7% to 22%, with a majority falling in the 14% to 22% range.<sup>21</sup>
    3. The Union's external market data shows the average difference between Patrol Officer and Sergeant wage dropping from 22.1% to 19% in 2013.<sup>22</sup>
    4. Given the Union's external market data, the Employer maintains a differential between Patrol Officer and Sergeant well within the external market pattern.
  - Internal equity and external market considerations strongly support the Employer's position:
    1. Uniform parameters were applied by the Employer using external market data and internal equity standards
  - The change in purchasing power strongly supports the Employer's position:
    1. The U.S. Department of Labor's Consumer Price Index (CPI-U) for the first half of 2014 is indicating a 1.7% change.<sup>23</sup>

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<sup>20</sup> Exhibit E-15.

<sup>21</sup> Exhibit E-16.

<sup>22</sup> Exhibit E-16.

<sup>23</sup> Exhibit E-17

2. The Employer's wage increase position for 2014 of 2.5% is most consistent with this data.
  3. The tepid CPI increases shown over the prior two years also support the Employer's position of a 2.5% increase for 2015.
  4. There has not been a CPI increase since 2011 that has approached 2.5%
- The Arbitrator is bound by statute to consider the statutory rights and obligations of the Employer to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.<sup>24</sup>
    1. Arbitrators have increasingly noted since 2008 that the traditional "ability to pay" concept includes consideration well beyond the simple question of whether an award would bankrupt the employer.
    2. In applying the statutory standard, employers have included considerable evidence detailing the weakness in the state and national economic climate.
    3. Recognition of this weakness has continued into recent interest arbitrations.<sup>25</sup>
    4. The demographics of the City of Golden Valley are particularly hard hit by any significant increase in its expenses such as taxes.
    5. A 2006 resident survey shows over one fourth of households are headed by retirees with an average age of 54.3 and one third report having school age children.
    6. A shift to greater reliance on residential property for tax revenue and continuing debt obligations present a looming financing challenge.<sup>26</sup>

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<sup>24</sup> Minn. Stat. 179A.16, Subd. 7.

<sup>25</sup> Cited is LELS and Dakota County, BMS Case No. 13-PN-0284, (Befort, 2013) at page 6; LELS and City of Stillwater, BMS Case No. 12-PN-1088 (Powers, 2013) at pages 4, 5, 17.18.

7. Arbitrators have recognized that having a city general fund balance higher than the 35-50% minimum recommended by the State Auditor is not an appropriate basis for awarding a general increase.<sup>27</sup>
  8. The City of Golden Valley has a current fund reserve that is 59.85% of its expenditures.<sup>28</sup>
  9. The benefit to the Employer of operating within the 35-50% range is important to maintain its Aa1 bond rating, which reduces its insurance and interest rates.
  10. A strong general fund balance is also vital to cover unexpected expenses, such as was experienced in the harsh winter of 2013-2014.
- The Employer has devoted a large portion of its available resources to its employees through 2015.
    1. The Employer's position of a 2-½% increase in each 2014 and 2015, plus the external market adjustments, represents a significant policy decision to commit resources far beyond a level called for by the CPI.
    2. Any amount beyond that already proposed or committed would not be in accordance with the Employer's statutory rights and obligations to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these operations.
  - Recruitment and retention support the Employer's position:
    1. The Employer has not had a Sergeant leave its employment for a higher similar position with another comparable city in the recollection of the Police Chief.

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<sup>26</sup> Exhibit E-18.

<sup>27</sup> Cited is Washington County and MNPEA, BMS Case No. 12=PN-0813 (Miller, 2013) at page 9.

<sup>28</sup> Exhibit E-19.

2. The Employer has had ample candidates to fill vacancies. The latest position to be filled had seven internal applicants, one of which was selected.
- The bargaining history of the Parties indicates that they have successfully resolved issues in dispute through joint negotiations
    1. Any issue beyond the matter of the general increases for 2014 and 2015 should be left to the Parties to resolve through good faith quid pro quo negotiations a they have successfully accomplished throughout their bargaining history.
    2. The instant case is the first occasion an issue has been referred to arbitration, which is an excellent indicator of the Parties ability to jointly resolve issues.

THE UNION'S POSITION ON "COURT TIME" IS SUPPORTED WITH THE FOLLOWING:

- From time to time, night shift Sergeants are required to attend court during the day.
- When this happens at the end of a continuous string of days on or at the beginning of a continuous string of days on, the disruption is manageable.
- When a court appearance happens in the middle of a series of shifts, it creates a major disruption to the Sergeant.
- Increasing the minimum hours of pay for this added disruption is justifiable.
- Equals should be treated equally, but in this case an inequality exists for Sergeants who are in the middle of series of shifts.
- Increasing the minimum hours of pay could also have a positive consequence of better coordination, preventing the need for officers to attend court if he or she is not needed.

THE EMPLOYER'S POSITION ON "COURT TIME" IS SUPPORTED WITH THE FOLLOWING:

- This issue is not arbitrable and is not properly before the Arbitrator.
- To the extent the Arbitrator substantively considers this issue, the Employer's position is for no change in existing CBA language.
- As the party proposing the change, the Union has the burden of showing the need on a quid pro quo basis.<sup>29</sup>
- "Arbitrators traditionally are reluctant to grant new economic benefits that have not been established during the collective bargaining process, and then only where there is overwhelming justification for their inclusion."<sup>30</sup>
- There is no overwhelming justification of adding the Union's proposed Court Time benefit.
  1. Golden Valley Patrol Officers do not have this benefit.<sup>31</sup>
  2. Sergeants already have language superior to that of the Patrol Officers.<sup>32</sup>
  3. This external market does not support such a change.
  4. The Union has not provided evidence that this is a standard benefit afforded to Sergeants in other comparable jurisdictions.
  5. To the contrary, this is a benefit that does not appear to commonly exist in the external market.
  6. In that this benefit is not supported either internally or externally, it is the very type of novel economic benefit that, if it is to be included in a collective bargaining agreement at all, it must be included as a negotiated benefit.

**THE UNION SUPPORTS ITS POSITION ON "HOLIDAY PAY" WITH THE FOLLOWING:**

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<sup>29</sup> Cited is City of Bemidji and LELS, BMS Case No. 07-PN-0285 (Toenges, Feb 28, 2008) at page 42.

<sup>30</sup> Cites is City of Deephaven and LELS, BMS Case No. 00-PN-1705, (Anderson, December 16, 2000) at page 22.

<sup>31</sup> Exhibit E-8, at page 9.

<sup>32</sup> Exhibit E-3, at page 9.

- Sometimes a Sergeant is called in to work on his or her day off due to the needs of the department.
- When this happens, the Sergeant is paid 1 ½ times his or her regular rate of pay, while all regularly scheduled officers are being paid at straight time.
- Sometimes these OT call-ins happen on the Sergeant's scheduled off holiday, when he or she has most often made plans with family.
- When this happens, the Sergeant is paid 1-½ times his or her regular rate of pay, which is the same as all regularly scheduled officers for that holiday.
- The City recognizes unequals should be treated unequally, thus the OT rate for regular overtime shifts.
- During OT on holidays, unequals are being treated equally, which needs to be corrected.
- Other departments in the Metro Area provide this additional pay to ensure unequals are treated unequally.
- The disruption to the Sergeant's personal life warrants the small increase in additional compensation.
- The cost is almost inconsequential, noting that there are only 12 days in which this could potentially happen.
- The City has argued that this increase in compensation could lead to officers gaming the system, whereby a scheduled officer would call in sick to provide a windfall for the overtime officer. This argument is non-unique, as there is no evidence it happens now with regular shifts. Additionally, it is a tad insulting to the integrity of the officer.
- By providing an incentive [for] the Sergeants to work overtime on holidays, public safety will not be jeopardized by shifts getting uncovered.

THE EMPLOYER SUPPORTS ITS POSITION ON "HOLIDAY PAY" WITH THE FOLLOWING:

- This issue is not arbitrable and is not properly before the Arbitrator.

- To the extent this issue is substantively considered by the Arbitrator, the Employer's position is for no change in exiting CBA language.
- Because the Union is seeking a new economic benefit, the same standard applies as cited in the previous issue (it should not be awarded unless there is overwhelming justification for its inclusion).
- The Union's position calling for two times pay on a regularly scheduled holiday off represents a massive deviation from the existing negotiated language.
- There is not a standard benefit similar to what the Union is seeking in the internal or external market. The Union acknowledged in negotiations that this is not a common benefit among the external comparison group.
- Given that this benefit does not exist internally and is not common in the external market, the arbitral principal of not adding new or novel language in an interest case is particularly applicable.
- This principal was well stated by Arbitrator Bognanno.<sup>33</sup>
- By introducing the concept of additional pay for holidays worked, the Union is attempting to reintroduce the individual holiday compensation concept on top of the collective approach to holidays that currently exists in the CBA.
- The Union's position is precisely the type of innovative language that should never be awarded in interest arbitration.

### **DISCUSSION, WAGE ISSUES**

The Union's position on wages is for a 2 ½% general increase in 2014 and a

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<sup>33</sup> Cited is Minnesota School Employees Association and ISD No. 11, Coon Rapids, BMS Case No. 84-PN-52-A (Bognanno, 1984) at pages 7-8.

2-½% general increase in 2015. This is also the Employer's position, but what separates the Parties is the Union's position for an added 4% increase in 2014. The added 4% mirrors an increase Patrol Officers received in mid 2013, based on a market study that showed the Patrol Officers wage low in the market pattern. This same study did not indicate any adjustment for Sergeants. The effect of the Patrol Officers receiving the 4% market based increase is to lesson the wage differential between the Patrol Officers and Sergeants. This then is the crux of the dispute that brings the wage issue to arbitration for resolution.

EXTERNAL MARKET COMPARISONS:

In 2013, the Employer retained TruSight, a consultant, to conduct a market wage study. The purpose of the study was to determine if wages paid by the City of Golden Valley were in compliance with its policy of paying 66.7 % of the maximum rate paid for comparable jobs in other comparable Metro Area cities. To be meaningful, Jobs to be compared should be well matched using, such factors as job content, responsibility, working conditions, educational and experience requirements. There are limitations in conducting such a study including a lag in the reporting of wage data, sources of data, incomplete data, accuracy of data and method of calculating the maximum comparison rate.

The study indicated that some 19<sup>34</sup> of the Employer's 62<sup>35</sup> job classes were below 66.7% of the maximum wage rate of the cities surveyed. One of these job classes was Patrol Officer. In July of 2013, the Union and Employer amended the CBA with the Patrol Officers to adjust the wage rates based on the findings from the survey.<sup>36</sup> An effect of this was to lesson the wage differential between the top Patrol officer rate<sup>37</sup> and the top Sergeant rate by some 4% beginning August of 2013. The

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<sup>34</sup> Exhibit E-11.

<sup>35</sup> Exhibit E-7.

<sup>36</sup> Exhibit E-13.

Employer's position in the instant case would maintain the resulting differential, while the Union's position would re-establish the previous differential.<sup>38</sup> The historical differential between top Patrol Officer and Sergeant was approximately 22% until 2013, when it changed to 19% following the Patrol Officer market adjustment in August of 2013. The Employer's wage position mirrors the 2014 general wage adjustment of 2-½ % approved for non-union employees<sup>39</sup> and the 2014-2015 wage increases the Employer and Union negotiated for Patrol Officers.<sup>40</sup> The Parties stipulated that compliance with the Minnesota Pay Equity Act does not impose a limitation on either the Employer or Union position.<sup>41</sup>

The Union takes issue with certain aspects of the Employer's wage study. The Union argues that if relevant omissions are taken into account, it will show that the sergeants should also be eligible for a market adjustment. The Union points out that certain comparable<sup>42</sup> cities were left out of the Employer's Study and longevity pay should have been considered. While the Employer' study shows 66.7% of the maximum market rate for Sergeants at \$87,030,<sup>43</sup> the Union's study shows it at \$89,664,<sup>44</sup> a difference of about three (3) percent.

#### INTERNAL WAGE RELATIONSHIPS:

The Union argues that the effect of omissions, in the Employer's study, has negatively affected the internal wage relationship between Sergeants and Patrol

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<sup>38</sup> Exhibit E-10, C-3

<sup>39</sup> Exhibit E-10.

<sup>40</sup> Exhibit E-8.

<sup>41</sup> Exhibits U-33-34; E-7.

<sup>42</sup> The Union's study includes nine cities with a population of 20,000 or more and includes longevity in those cities where it is paid to Sergeants.

<sup>43</sup> Exhibit E-12.

<sup>44</sup> Exhibit U-48.

Officers. The Union introduced an Exhibit<sup>45</sup>, which shows the 2014 top wage position of each Party and the effect on the wage spread between Sergeants and Patrol Officers. The Union's position would re-establish the wage spread between Sergeant and Patrol Officer that existed prior to the Patrol Officer market adjustment in 2013, while the Employer's position would retain the spread thereafter. If the maximum longevity pay for Patrol Officers (9%) is taken into account, the wage spread would be about 5% under the Employer's position and about 9% under the Union's position. The Union points out that longevity pay for Patrol Officers is a real wage spread factor, as it is part of the wage range with eligibility based only on years in grade.

The Employer points out that Sergeants wage is already above predicted pay under State mandated Pay Equity Act Standards by nearly \$500 per month and any increase beyond the Employer's position would further exacerbate this circumstance<sup>46</sup>.

The Employer also points out its position for a 2 ½ % increase will continue to maintain an acceptable wage spread between Sergeants and Patrol Officers. The record shows that the spread between top Patrol Officer and Sergeant was 22% for some twelve years prior to 2013<sup>47</sup>. A 22% spread is greater than that of 44 of the 50 cities surveyed.<sup>48</sup> The existing spread of 19% is greater than that of 41 of the 50 cities surveyed.<sup>49</sup>

The record is unclear whether the Employer and Union wage study timing and methodology is the same. Therefore, the different results shown cannot be accurately interpreted. Even if the Union's survey showing additional cities is taken

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<sup>45</sup> Exhibit U-49.

<sup>46</sup> Exhibit E-7.

<sup>47</sup> Exhibit U-37.

<sup>48</sup> Exhibit U-36.

<sup>49</sup> Exhibit U-36.

at face value, the difference between it and the TruSight Survey is minimal at less than two (2) percent.<sup>50</sup>

While longevity pay is typical for Patrol Officers it is rare for Sergeants. Due to the many variables in attempting to compare wage rates among comparable cities, a comparison of wage differentials between Patrol Officer and Sergeant is more relevant to the issue in dispute. The Union has provided such a comparison in Exhibits 36 and 37. These Exhibits show that, while the wage differential between Patrol Officer and Sergeant, lessened due to the market wage adjustment received by Patrol Officers in 2013, the differential is still larger than nearly two thirds of the cities surveyed.

Another consideration is how the Union's 2014 wage position affects internal wage relationships within the City of Golden Valley law enforcement job family. The Employer's 2014 wage position would maintain the existing wage differential between Sergeant and Lieutenant at 8.5%, while the Union's 2014 wage position would compress this differential nearly one half to 4.4%.<sup>51</sup> The actual wage differential is further lessened by Sergeants eligibility for overtime.

#### ABILITY TO PAY:

The cost increase of the Union's wage position is more than double that of the Employer. The Union points out that the \$34,861 additional cost of its wage position (excluding roll up costs) over the term of the two-year CBA, is only .33% of the Employer's Reserve Fund.<sup>52</sup> The Union points out that the Employer has a balance in its reserve fund greater than the minimum recommended by the State Auditor.<sup>53</sup>

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<sup>50</sup> Exhibit U-46.

<sup>51</sup> Exhibits E-10, U-6, E-20, C3.

<sup>52</sup> Exhibit U-50.

<sup>53</sup> Exhibits U-29-31; E-19.

The Union points out that the Employer has also received a first Local Government Aide Grant of \$200,000 for 2014.<sup>54</sup>

The Employer points out that maintaining a substantial General Fund Reserve is critically important to the health of City finances and provides benefit of higher interest earnings, lower interest costs, higher bond ratings and lower insurance costs. Further, without a substantial reserve the City would have to borrow money to provide interim financing between receipt of semi annual tax revenues.

The Employer points out that arbitrators have increasingly noted that the concept of “ability to pay” includes considerations well beyond the simple question of whether an award would bankrupt the employer. The Employer further points out that Minnesota Statutes<sup>55</sup> establish standards that the arbitrator is to consider in rendering an award, which includes the obligations of the employer to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these operations.. The Employer also points out that changing demographics in the City has created an increasing burden to fund existing and future debt service from property taxes.

#### COST OF LIVING:

The Union points out that the economy is in a recovery mode, with rising economic indicators and increased State tax revenues, all of which support the Union’s wage position.<sup>56</sup> The Union also points out that Golden Valley citizens rate its law enforcement services highly and the Cities crime rate is in general decline.<sup>57</sup> The Employer points out that its wage position compares favorably to the rise of 1.7% in

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<sup>54</sup> Exhibit U-32.

<sup>55</sup> Cited is Minn. Stat. 179A.16.

<sup>56</sup> Exhibits U-13 – 25.

<sup>57</sup> Exhibits U-27 – 28.

the Consumer Price Index during the first half of 2014.<sup>58</sup> The Employer also point out that its position compares favorably to wage adjustments in the comparable market.

#### RECRUITMENT AND RETENTION:

A major purpose for determining the external wage pattern is to insure that the internal wage rates paid are sufficiently competitive to attract and retain employees. A wage comparison with the historical group of comparable cities provides the Parties with this information. The City of Golden Valley Market Study of 2013 was another means to insure that internal wages rates were competitive with the external market.

The Employer points out that no Sergeant has left to accept a higher paying Sergeant position in a comparable city in the recollection of the Police Chief. The Employer also points out that, as a promotional position, it has experienced no problem filling Sergeant positions. When a vacancy opened up in mid 2013, there were seven applicants vying for the promotion, The vacancy was filled with one of the promotional applicants in July 2014.

#### BARGAINING HISTORY:

The Union and Employer have a lengthy collective bargaining relationship. During this lengthy relationship, the Parties have selected a group of comparable cities which they survey for wage and benefit comparison. The Parties have also followed a practice of establishing wages at approximately 66.7 % of the comparable city pattern. The instant matter is the first occasion that a dispute over new wage rates has been submitted to arbitration.

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<sup>58</sup> Exhibit E-17.

The record shows that the Parties have successfully negotiated changes in the Sergeant pay structure, such as changing the number of steps in the pay range.<sup>59</sup>

### **WAGE FINDINGS:**

The position of the Union and Employer for a general wage increase in 2014 and 2015 is the same at two and one half (2 ½) percent each year.

The difference in the Union and Employer wage positions regards a market based increase in the Patrol Officer wage schedule, which has had the effect of lessening the wage differential between the Patrol Officer and Sergeant wage.

As a result,, the wage differential between Patrol Officer and Sergeant, previously among the upper fifteen (15) percent of comparable cities, is now among the upper thirty six (36) percent.<sup>60</sup>

Of the 50 cities in the Union's survey, 33 have a wage differential between Patrol Officer and Sergeant smaller than The City of Golden Valley, while 17 cities have a larger differential. <sup>61</sup>

When longevity pay is taken into consideration, 31 cities have a smaller wage differential between Patrol Officer and Sergeant while 18 cities have a larger differential.<sup>62</sup>

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<sup>59</sup> Exhibit E-20

<sup>60</sup> Exhibits U-36, E-16 show the differential at 22% (which is among the top 12% of comparable cities.

Exhibit U-37 shows the historic differential at 22.6% in 2001; 22.1% in 2012; 19% in 2013, following the Patrol Officer market adjustment.

<sup>61</sup> Exhibits U-36 E-16.

<sup>62</sup> Exhibit U-38.

The record shows that the Parties have followed a practice of positioning their wage rates at approximately 66.7 % of the top market rate.

The wage differential between Patrol Officer and Sergeant, now at approximately 64% of the comparable market pattern, is consistent with the practice of the Parties to position wages at approximately 66.7 % of the comparable market pattern.<sup>63</sup>

The Employer's 2014 wage position would maintain the wage differential between Sergeant and Lieutenant at 8.5%, while the Union 's 2014 wage position would compress this differential to 4.4%.

Although the Union's wage position is not beyond the limits of the Pay Equity Act Standards, the existing Sergeant wage rate is already some \$500 above its predicted equity value.<sup>64</sup>

While the cost difference in the Union and Employer wage positions does not rise to a level beyond the Employer's ability to pay, it is substantial with the Union's position being over 200% of the Employer's position.<sup>65</sup>

Due to the consequences of changing the internal wage relationship within the law enforcement job family, such changes are best left to resolution by the Parties, via future bargaining with affected employees, rather than the Arbitrator

**WAGE AWARD**<sup>66</sup>

**2024 monthly wage rates shall be as follows:**

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<sup>63</sup> Exhibits U-36, E-16.

<sup>64</sup> Exhibit U-33, E-7.

<sup>65</sup> Exhibit U-50.

<sup>66</sup> Exhibit E-20, C2

<u>Step 1</u>	<u>step 2</u>	<u>step 3</u>
\$6901.76	\$7177.82	#7464.93

**2015 monthly wage rates shall be as follows:**

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
\$7074.30	\$7357.26	\$7651.55

**DISCUSSION ON COURT TIME:**

Under the existing CBA provision, Sergeants scheduled to appear in court during off duty time receive a minimum of four (4) hours straight time pay or pay at time and one half (1 ½) for the actual number of hours spent in court, whichever is greater. The Union's position is to amend this provision to require a minimum of six (6) hours straight pay or pay at one half (1 ½) times the Employee' pay-rate for the actual number of hours spent in court, whichever is greater. This would be a new benefit for employees who work the evening shift and are scheduled to appear in court between consecutive shifts. The Union argues that this latter situation adds inconvenience to Sergeants by interrupting their more limited time off during a shift change. The existing provisions in the Sergeants CBA also appear in the Patrol Officer CBA. Thus, court duty pay has been uniformly applied to all union law enforcement personnel.

Although the Arbitrator can appreciate the point the Union makes, the Arbitrator is reluctant to award a change that would disrupt the uniform application of a benefit. This matter is best left for future bargaining, when it can be open for negotiations with all affected employees.

**AWARD - COURT TIME**

**There shall be no change in existing court time language.**

DISCUSSION, ON HOLIDAY TIME:

Due to the 24-hour per day, seven day per week coverage of law enforcement services, law enforcement employee regular work schedules include weekends and holidays. In consideration of regular work schedules including holidays, each employee is granted 12 days leave each year in lieu of holidays. These 12 days are added to an employee's vacation benefits and are credited whether or not the employee actually works on a holiday. Under this arrangement, employees who are on a work schedule that includes holidays, receive the same number of days off as employees whose work schedule allows holidays off.

Notwithstanding the above-described arrangement, employees whose schedule includes a holiday are paid time and one half (1 ½) the employee's regular rate for all hours worked on the holiday, plus receive holiday time.

The Union's position is to add a new benefit to the CBA language, providing that "An employee called in to work a holiday on his or her scheduled day off will be compensated at the rate of two (2) times the employee's regular rate of pay." As is the case with Court Time, the holiday benefit for all union law enforcement personnel has been applied uniformly. The Arbitrator is reluctant to award a change in a benefit that has been uniformly applied to all union law enforcement personnel. This matter would be best addressed in future bargaining when it can be open for negotiations with all affected employees.

**AWARD - HOLIDAY TIME**

**There shall be no change in existing Holiday Time language.**

**CONCLUSION**

The Parties are commended on the professional and through manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving these disputed matters.

Issued this 22<sup>nd</sup> day of September 2014 at Edina, Minnesota.

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ROLLAND C. TOENGES, ARBITRATOR

