IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

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City of Duluth, Minnesota,

Employer,

and

Duluth Police Union,

Union.
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INTEREST ARBITRATION DECISION AND AWARD

BMS CASE NO. 07PN0383

ARBITRATOR:	Stephen A. Bard
DATES OF HEARING:	August 14 and 15, 2007
PLACE OF HEARING:	Duluth City Hall
DATE OF MAILING OF POST-HEARING BRIEFS:	September 21, 2007
DATE OF DECISION AND AWARD:	October 8, 2007

APPEARANCES:

For the City:

Ms. Lisa D. Wilson
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Duluth, MN. 55802

For the Union:

Mr. Thomas F. Andrew
Andrew & Bransky, PA
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INTRODUCTION

This matter came on for conventional interest arbitration before Neutral Arbitrator Stephen A. Bard, on August 14 and 15, 2007, at 8:00 a.m. in the Duluth City Hall, Duluth, Minnesota. The Employer was present with its witnesses and was represented by Ms. Lisa D. Wilson, Duluth Assistant County Attorney. The Union was present with its witnesses and was represented by Mr. Thomas F. Andrew of the law firm of Andrew & Bransky, PA.

Testimony and exhibits were taken at the time of the hearing and at the conclusion thereof the parties agreed to simultaneously serve and submit briefs on September 21, 2007.

ISSUES

Eight issues were certified at impasse by BMS pursuant to Minnesota Statute Section 179A.16. These concerned the following Articles of the collective bargaining agreement ("CBA"):

1. Wages-Amount of Adjustment 2007--Appendix
2. Wages-Amount of Adjustment 2008—Appendix
3. Wages-Amount of Adjustment 2009—Appendix
4. Retiree Health Eligibility Coverage—Article 20
5. Active Medical Insurance—Provided Coverage & Fitness Program—Article 19
6. Personal Leave—Usage—Article 13.2
7. Clothing/Uniform—Eligibility—Article 12.1
8. Masters Police—Eligibility—Article 48.6

At the hearing the Union withdrew its requests for issues number 6 and 7 and the City agreed to the withdrawal. Accordingly, there remain six issues for decision by the Arbitrator.

ISSUES 1, 2, AND 3---WAGES

FINAL POSITION OF THE UNION

The Union proposes the following wage increases for all pay ranges contained in the

Appendix: 2007—Increase of 3%
2008—Increase of 3%
2009—Increase of 4%

FINAL POSITION OF THE CITY

The City proposes the following wage increases for all pay ranges contained in the

Appendix: 2007—Increase of 1%
2008—Increase of 3%
2009—Increase of 3%

ARGUMENTS OF THE UNION

The Union's arguments in support of its final position on wages are summarized below.

1. **Internal Comparability**-The City has reached agreement on a 1% increase in 2007 and 3% in 2009 with the City's Supervisory Union, the City's Firefighter's Union, and the Confidential Union and urges the Arbitrator to use these settlements as a basis of the wage award for those years. This should be rejected because those three unions cumulatively only represent 23.2% of the unionized employees of the City.

2. **External Comparability**

(a) The average 2007 wage award in interest arbitrations in Minnesota to police and other units is over 3%.

(b) The Union data compares Duluth police pay with cities of populations between 382,618 and 32,177, adjacent Hermantown, UMD Police, and State Highway Patrol. Many of these jurisdictions with smaller populations have or soon will have higher top salaries than the Duluth Police. The Union uses the following comparison group:

Moorhead	Minneapolis	UMD
Brooklyn Park	Hermantown	St. Cloud
St. Paul	Bloomington	MN. State Patrol
Coon Rapids	Rochester	

Hermantown is included the chart since it is contiguous to Duluth. UMD is included in the chart since the officers work within the City of Duluth. The Minnesota State Patrol is included since a number of officers in the patrol work within the City of Duluth.

(c) The cities that the City has chosen to use in its external comparables are:

City	Population in 2000
Duluth	86,918
Hibbing	18,046
Cloquet	11,201
Virginia	9,157
Hermantown	7,448
Proctor	2,852
Superior, WI	27,134

Although these cities are "regional", they are not comparable because these small cities have small police departments without the specialization found in Duluth's police department. Duluth has the third largest police department in the state.

(d) The unreasonable criteria used by the City to choose these comparable cities makes it clear that what the City actually did was to pick the comparables that would be most favorable to it and then devise the criteria that would somehow match these cities with Duluth.

(e) The City acknowledged that Duluth's crime rate is in the top 5 in the state and that Duluth employs the third largest number of police officers in the state yet it does not include Minneapolis or St. Paul in its comparisons.

(f) City comparability data show that even if the Union's proposed 3% wage increase is granted in 2007, Duluth would still be only ranked 5th out of the nine cities chosen by the City to make its comparison. If the Union's proposals are granted Duluth would still be third out of the four cities that have concluded CBAs through 2009.

3. **Cost of Living**

Cost of Living Data based on national averages between 1999 and 2006 show that to prevent erosion in buying power would require a 4.04% raise in 2007. The City's own cost of living chart shows that over the past four years the wages provided to the members of the Union have not kept up with the cost of living. From 2003 to 2006 the cost of living has increased 11.6% while the wages of the members of the Union have only increased 9.5%. If the City's 2007 proposed pay increase of 1% is awarded, the members of the Union will fall another 2.349% behind inflation as the inflation rate in 2007 is 3.349%.

4. **Pay Equity Act**

The last pay equity study for this City was dated January 28, 2003. Using the data from that report, and comparing beginning salaries, both heavy equipment operators and firefighters are paid significantly more "per comparable work point" than are starting police officers. This flies in the face of the statutory mandate to achieve equitable compensation relationships based on comparable work value of work performed by each class of employees.

5. **Ability to Pay**

The City currently projects a budget shortfall for 2008 of $5.4 million. This deficit has been caused by a combination of the cutback in State Aid to Local Governments as a result of the Governor's "No New Taxes" Policy, the complete refusal and/or failure of the City to raise its property taxes since 1981, the construction of a parking ramp with large cost overruns, and the drain on the City's revenues caused by its contribution to the money losing Aquarium. These should not be taken out on the police. In addition, the projected budget deficit greatly exaggerates the anticipated increase for retiree health insurance cost in 2008 and future years, ignores the savings the City will realize from moving active employees and retirees to a single medical plan and a single drug plan, and does not take into account the discretionary funds available to the City in the Community Investment Trust.

6. **Professionalism and Workload**

The Duluth Police Force is highly regarded and its members have received numerous commendations. In addition, the workload has increased dramatically. Between 1984 and 2006 the numbers of call for service increased by 94% while the number of officers available to take those calls increased by only 5%.

7. **Recruitment and Retention**

The City's failure to keep pace with other jurisdictions in police salaries has led to a drop in applicants, especially those with prior experience, and this has led to lower retention rates. For example, the percentage of new recruits lost was 20% for the four years of 1995 to 1998 and rose to 30% for the years 2003 through 2006.

8. **Savings to the City by Union Concessions**

The Union has made two major concessions during negotiations the savings from which will easily fund the Union's requested pay increases. These are:

(a) Moving all of the Union's members to Health Insurance Plan 3A will save the City an estimated $81,000.00 annually.

(b) Agreed upon changes in the administration of the drug benefits program by all of the City Unions is estimated to save the City a minimum of $760,000.00 annually.

ARGUMENTS OF THE CITY

The City's arguments in support of its final position on wages are summarized below.

1. **Police officers want to work in Duluth; Recruitment and retention rates support the City=s offer.**

The City=s police department is a professional and career oriented department, which continues to attract qualified candidates, many of whom have served in other police departments from across the State. Despite fewer qualified applicants nationwide due to demographics, the City recently received 150 qualified applicants for the position of police officer. More of these applicants have law enforcement experience in other jurisdictions than applicants from previous years. The number of applicants received is double the amount of applicants the City received in 2006 and the greatest number of applicants since 2001. When the City hired nine police officers this summer, over half had experience in other jurisdictions.

While other jurisdictions attempt to recruit in Duluth and offer moving expenses, signing bonuses or other gimmicks, the City continues to attract numerous applicants based upon its offered wages, benefits and quality of life.

Once hired, very few officers leave the department for employment elsewhere. Over 85% of resignations are due to retirement. In the last ten years, only five police officers have resigned. In most years, there are no resignations in the police department. Turnover is very low and is not an issue for the City.

2. __The City=s proposal is consistent with the internal settlements among the bargaining groups; The Union=s proposal is not.__

The City has voluntarily reached agreement on the labor contracts for 2007-2009 with the firefighters, supervisors and confidential units. The firefighters, supervisors and confidential groups all voluntarily agreed to the City=s offer of 1%, 3%, and 3%. These units received the pay increase of 1% effective January 1, 2007. The City=s offered pay increase to the police is retroactive to January 1, 2007.

The City has traditionally negotiated a uniform pattern of wage increases across all bargaining units. In 4 out of the last 5 contracts since 1995, all bargaining groups have negotiated the same percentage pay increase. The only exception occurred in the 2000-2002 contract when the police negotiated a greater pay increase in year 2000 for less in 2001 and 2002. Under that contract, the police also negotiated master cop pay and expanded the hours that qualified for the night shift pay. The end result was an overall pay increase comparable to the increase negotiated by the other bargaining units. Duluth police have historically been compensated greater than Duluth firefighters. The City=s offer does not change that pattern.

Awarding the Union=s demand would disrupt this internal settlement pattern and negatively impact labor relations. If the Union demand is awarded, it will have a chilling effect on future labor negotiations at the City. No bargaining unit will want to reach agreement first for fear that it will Asettle@ for less in wages. An award of the Union=s proposal would also disrupt the working environment among the bargaining groups. The police department does not operate in a vacuum. The delivery of police services necessarily involves contributions and work from members in other bargaining groups. A greater pay increase to one group over the other produces animosity and a perception of decreased worth. The result is poor working relationships and strained labor relations.

3. <u>External market comparisons support the City=s offer.</u>

(a) In attempting to analyze the compensation of police officers, the City compared the compensation of employees who had two years of service. All "add-ons" to pay were included. The Union=s market comparisons involve the compensation of a starting police officer and the officer=s Atop monthly salary@. However, it conveniently excluded 4% longevity pay at 8 and 16 years of service, thereby distorting the level of pay received by Duluth police officers as compared to other departments by more than 8%.

(b) In trying to define what cities are economically comparable to Duluth, the City did not identify comparison groups ahead of time, but selected comparison cities after applying criteria to measure their similarity to the Duluth police department. The City was looking for cities with similar populations, similar size police departments, demands for similar services, and similar tax burdens. In contrast to the City=s reasoned approach at discovering comparable communities, the Union included the two largest police departments in the State, along with Minnesota university police and the State Patrol. There was no showing that these entities have comparable departments, comparable demands for service or comparable tax burdens Over 30% of the Union=s comparables are arbitrary.

(c) Duluth police officers are paid within the norm of police officers in state comparable communities, and the City=s proposal preserves this position. Among regional comparables, Duluth has the highest pay rate. UMD is not comparable. The State Patrol=s wages are determined in the metro area, and they have not settled for 2007 and 2008. The true effect is that under the Union demand, Duluth remains the highest paid regional police department, but at a greater cost to the taxpayer.

4. <u>Pay equity is not an issue</u>.

The City is in compliance with the statutory requirement of pay equity. The Union argues that its large wage increase is supported by the job point comparison between its members and firefighters. It relies on the City=s Pay Equity Implementation Report. This report shows that fire and police are male dominated positions. The Union=s position has been rejected by the courts. In <u>Armstrong v. Civil Service Commission of the City of St. Paul</u>, 498 N.W.2d 471 (Minn. App. 1993), the court noted that the express purpose of pay equity was Ato eliminate sex-based wage disparities in public employment.@ The Act was not created for the purpose of wage comparison between jobs where gender is not an issue. The Court held in part:

> AThe legislature was not attempting to eliminate perceived wage disparities for everyone in the state, regardless of gender. That would be an impossible task and an impermissible infringement on the right of labor and management to independently negotiate.@

5. <u>Cost of Living</u>

The Union used national cost of living figures rather than statistics for the region in which Duluth is located. The Regional C.P.I., as compared to the percentage wage increase received by police over the last ten years, shows that the percentage of pay increase received by police officers has been greater than the regional C.P.I. in seven out of the last ten years. On average, police pay raises have exceeded the average rate of inflation.

6. <u>Other Arbitration Awards</u>

No police department in Minnesota, received a wage arbitration award of 4% in 2005. The average wage award in 2006 was 2.64%. Even under the City proposal, the police receive more in pay increases than has been awarded on average through arbitration at a cost to the City of over $1 Million. On top of their wage demand, they also propose to receive the additional 1% of base pay into the health care savings plan account. Their wage demand equates to 3%, 3% + 1%, and 4% + 1%. If an over market wage award is made, the budget adjustment (layoff) will most likely occur in another department, where workers are in a different union.

7. <u>The benefits that Duluth officers receive are exceptional.</u>

No comparable police department in the State of Minnesota offers the level of benefits granted by the City. In making wage comparisons, one must attempt to compare the entire compensation package including employer pension and insurance contributions, the value of vacation and sick pay benefits, longevity or stability pay, etc. Looking solely at wages produces a skewed and inaccurate picture.

DISCUSSION ON WAGES

<u>Internal Comparability</u>

The Arbitrator is not persuaded by the City's arguments on internal comparability. Historically, fringe benefits have been compared internally and wages have been compared externally in order to maintain a level of consistency between employee groups in the same government unit while at the same time recognizing that differences in job requirements and skills make an internal comparison of wages between employee groups somewhat of an "apple and oranges" comparison. This was changed to a degree by the mandates of the Local Government Pay Equity Act which requires interest arbitrators to take internal wage comparisons into account to eliminate disparities in compensation between male dominated and female dominated groups.

It is natural for Duluth and all cities to want uniform percentage wage increases for all of its employee groups for reasons of employee morale, etc. Furthermore, there is some validity to the argument that different percentage raises would make each Union afraid to be the first to settle out of fear that it might be taking less than another group.

This argument, however, is a two edged sword and is not persuasive to this Arbitrator. Carried to its logical conclusion it effectively eliminates collective bargaining and locks every Union in a city to the pay raise negotiated by the first Union to settle. If followed rigidly, it would encourage public employers to always settle first with its smallest and weakest union and then claim a binding precedent had been set for wages for the remaining groups. It also has the effect of completely eliminating consideration of market factors and the differing demands of differing jobs. As the Union correctly observes in this case, the wage settlements which have been reached in Duluth only represent 23.2% of the City's unionized employees. The Arbitrator does not believe that this should automatically compel a similar award for the remaining employees simply to maintain a pattern of internal consistency in wage increases.

. **External Comparability**

The first consideration in making meaningful external comparisons of wage patterns is defining an appropriate comparison group. As noted above, the parties each challenge the other's group and the proper criteria for comparison.

Although it is desirable to attempt to compare with other units in the same geographical region of the state, this Arbitrator believes that it is more important to compare to communities with similar characteristics. Two cities located near one another with almost equal populations may be very unlike one another. One may be an industrial city with a high crime rate and the other an affluent suburb of a larger metropolitan area with a very low crime rate. The two cities may have very different tax bases and demographics. The jobs of police officers in these two communities may look the same superficially, but in reality may be quite different as may be the ability of the two communities to pay.

Duluth is in a unique position in this regard because there are no municipalities in its region of Minnesota with populations comparable to that of Duluth. Also, although Duluth is the third largest city in the state, it is not close to either of the Twin Cities in population or geographically.

In this case, the City utilized statistical data on a statewide basis to determine a comparability group. Its method compared crime rates, populations, number of police employees, and per capita comparison of Police and ambulance spending. This process produced the following list:

Bloomington
Brooklyn Park
Burnsville
Coon Rapids
Moorhead
Richfield
Rochester
St. Cloud

All of these except Moorhead, Rochester, and St. Cloud are Minneapolis suburbs.

The City presented comparison wage data for these communities but then altered the list by substituting the smaller regional cities cited above.

After much consideration of the issue, the Arbitrator has determined that although all of the comparison groups are somewhat flawed, the original statewide group used by the City is most appropriate. The smaller regional cities picked by the City, while having the virtue of being in the neighborhood, are simply too small to serve as models. The Union group includes the Twin Cities and the Highway Patrol which are, in this Arbitrator's opinion, too much larger and different from Duluth to properly be included in a comparison group. Although the Arbitrator is doubtful as to the relevance of ambulance pay in comparing police departments, the statewide group produced by the City's process is demographically most similar to Duluth even with the disadvantage of being overloaded with metropolitan suburban communities.

Before analyzing the external data, it should be noted that the Arbitrator agrees with the City that an accurate comparison of wages should, if possible, consider the entire benefit package including insurance contributions, pensions, longevity, etc. That said, making such comparisons is exceedingly complex even where there is extensive data on these benefits available to the Arbitrator. Unfortunately, there is insufficient data before the Arbitrator about these additional benefits in the other jurisdictions to factor them into the comparison. Accordingly, the Arbitrator has been necessarily confined to basing his decision on the wage data presented which consists of comparing all rates after 2 years of service and includes add ons as applicable but excludes longevity. In this regard, the Arbitrator is cognizant of the City's argument that the Union "conveniently" excluded 4% longevity pay at 8 and 16 years of service from its computations, thereby allegedly distorting the level of pay received by Duluth police officers as compared to other departments by more than 8%. As previously noted, there is unfortunately no way for this Arbitrator to evaluate this argument in the absence of longevity information for the comparison group of cities. The Arbitrator is not prepared to assume that the other cities in the comparison group do not also have either longevity benefits or other fringe benefits affecting the compensation package.

An analysis of the wage date for this comparison group yields the following results:

1. In 2006 Duluth ranked fifth in wages of the nine cities.

2. Both the City and Union proposals place Duluth fifth out of eight that have settled for 2007.

3. Both the City and Union proposals place Duluth fourth out of seven that have settled for 2008.

4. Both the City and Union proposals place Duluth third out of four that have settled for 2009.

Cost of Living

The Arbitrator agrees with the City that the CPI for Minneapolis-St. Paul is a more appropriate yardstick than the national figure. Based on that data, for the years 1995 through 2006. the CPI has increased by 31.2 points while Duluth police wage increases, not including "add-ons", has increased 33.5 points. On the other hand, if one looks only to more recent years, for 2003 through 2006 the CPI increased by 11.6 points and Duluth police wages by 9.5%.

. **Pay Equity Act**

The City is currently in compliance with the Local Government Pay Equity Act as administered by DOER and the parties are in agreement that the Arbitrator's award of either position will not have the effect of taking the City out of compliance and subjecting it to penalties. The Arbitrator is cognizant of the difference between firefighters pay and police officers pay based on a strict "pay for points" compensation plan for all city employees. However, the City is correct in pointing out that in **Armstrong v. Civil Service Commission of the City of St. Paul,** 498 N.W.2d 471 (Minn. App. 1993), the Minnesota Court of Appeals held that the express purpose of pay equity was Ato eliminate sex-based wage disparities in public employment. The Act was not created for the purpose of wage comparison between jobs where gender is not an issue." Accordingly, in reaching his decision, the Arbitrator has not considered this factor.

Ability to Pay

It is clear that Duluth is suffering from significant financial problems. Some of them do appear to be of its own making in the sense that the politicians have not had the political will to raise property taxes in 25 years. In addition, the Arbitrator cannot help but take into account that there is approximately $55,000,000.00 in the Community Investment Trust from revenues from the Fon-Duluth Casino, that this is a significant amount of additional revenue, that contributions continue to be made to it, that it is outside the General Fund, that it places no burden on the taxpayers, and that it is available at the discretion of the City Council to use as the City pleases. Historically, the City has used this fund for street improvements and maintaining the City's bond rating, but has now found it necessary to transfer at least $10,000,000 out of that fund to help fund its obligations for retiree's health benefits. The existence of this significant revenue source and its availability cannot be ignored.

This Arbitrator notes with approval the following excerpt from the Union's post-hearing Brief:

> "In Elkouri & Elkouri, "How Arbitration Works", Sixth Edition, the authors discuss why arbitrators do not emphasize the ability to pay criterion in making their decisions. The authors quoted the study by Dell'omo, 44 Arb. J. at 10 at page 1404 as follows:
>
> > The general conclusion [of the arbitrators interviewed] was that absent a specific ability-to-pay argument, the budget carried little weight on its own . . . The majority of arbitrators recognized the self-serving nature of such arguments. As one arbitrator noted, <u>"any good city budget manager can manipulate the budget to look like the city can't afford anything – relying on this type of information is not bargaining"</u>. (emphasis added)

In *Elkouri & Elkouri*, "<u>How Arbitration Works</u>", Sixth Edition, it is stated at page 1404:

> Most arbitrators will critically examine financial data presented to them and raise questions about such matters as available funds and alternative priorities. An ability-to-pay argument is likely to carry the most weight when an employer can demonstrate that it has done everything in it power to overcome an adverse financial

> position, both absolutely and in relation to what comparable public employers have done. However, an arbitrator is more likely to rule in favor of a union if the employer has not made sufficient taxing efforts as measured against comparable communities."

This Arbitrator is not suggesting that the budget presented by the City has been manipulated in any way. In fact, the Arbitrator is persuaded by the personnel cutbacks made in recent years in other departments that it is, in fact, experiencing serious budget problems. Nevertheless, this Arbitrator believes that to a significant degree this budget shortfall is a direct result of the failure over many years of the City's past political leaders to make the taxing and spending decisions necessary to properly fund all of the City's necessary activities and its future obligations. A large part of the problem originates at the State level with the cutback in aid to local governments. There are many contributing factors to the problem. Whatever the origins of the problem, the Arbitrator is persuaded that by using its discretionary funds and its taxing authority and making certain other cost saving decisions, the City does have the ability to pay the Union's wage proposals if the Arbitrator were to award them.

AWARD ON WAGES

The often stated standard that an interest Arbitrator is supposed to apply in making his decision is to make an award that the parties would have arrived at in bargaining if they hadn't bargained to impasse on the issue. This is, of course, no standard at all. There is no way of knowing what such an agreement would have been. In the end, the Arbitrator, after analyzing all of the arguments and data and balancing one against the other, is left to his or her own sense of fairness and judgment under all of the circumstances of the particular case. There simply is no magic formula one can apply to reach a solution. Presumably, if there were such a formula, the parties would have bargained a settlement and not reached impasse.

In this case, for the reasons stated above, the Arbitrator has given less weight to the City's arguments on internal comparability and ability to pay. He has adopted the City's position on the relevance of the Local Government Pay Equity Act and adopted the City's statewide group of comparable cities. The external comparability data do not by themselves compel an award of either position but do persuade the Arbitrator that the Duluth police are slightly under-compensated relative to comparable departments. The applicable cost of living data indicate that in recent years the Duluth police have lost some spending power and that the inflation rate in 2007 exceeds 3%. The issue of attracting and retaining new recruits is resolved in favor of the City. The evidence presented supports the City's view of the issue and, ultimately, this is the City's problem. The Arbitrator is persuaded that the City is proud of the caliber of its Police Department. If market forces make it difficult to attract or retain good police officers, the City will have to increase wages or benefits to maintain the quality of the department.

The Arbitrator makes the following Award on Wages:

1. 2007--------- 2% (retroactive to January 1, 2007)
2. 2008-------- 3%
3. 2009------- 3%

ISSUE 4---RETIREE HEALTH –ELIGIBILITY COVERAGE—ARTICLE 20

HISTORY OF RETIREE HEALTH BENEFIT

Prior to 1983 retirees had a sick leave bank of unused sick leave days. The 1982 and previous CBAs provided a formula for converting accumulated unused sick leave days into dollars and using those dollars to pay for single health insurance coverage for the retiree for up to five years. Under accounting rules in effect at the time, the City was required to "book" this amount as a liability.

In 1983 the City wished to eliminate the requirement to show that liability on its books. It agreed to the present plan which, under accounting rules then in effect, did not need to be booked as a liability. The present plan language in Article 20 is complex and varies depending on the length of service of the employee prior to retirement. However, for all Duluth police officers who retire with twenty years of service and are eligible for PERA pension benefits, the plan provides for the life of the retiree and at no cost to the retiree the same hospital-medical benefit as it provides to active employees. For retirees with dependents, it offers the choice between three plans available to active employees subject to certain deductible amounts on one of the plans. In addition, if the retiree dies before his or her spouse, the free coverage for the spouse will be continued until he or she dies or remarries.

In 2005 The Governmental Accounting Standards Board (GASB) directed that effective for fiscal year 2007 the City must recognize on its books the total estimated lifetime costs of the benefit in the years the services are provided. This is known as the OPEB liability. The City contracted with an actuarial firm to compute the amount of its OPEB liability. Some of those findings are as follows:

1. As of January 1, 2005, the City faced an unfunded Actuarial Accrued Liability (AAL) of just under $280 million arising from vested post employment health care benefits for its retirees and current active employees. This amounted to $3,300.00 for every man, woman, and child who was a citizen of the City of Duluth.

2. As of that date, there were in then present dollars another $82 million as a future obligation attributable to future service by employees under current health care plans. When factoring in the spiraling cost of health care, the actual dollar amounts to be incurred in future years was estimated at upwards of $1 billion dollars.

In August 2005 a Task Force was appointed by the City Council to study the problem. The Task Force issued its final report to the City Council on December 12, 2005. The Task Force made numerous findings and recommendations which were unanimously adopted by the City Council. The Mayor also endorsed the recommendations of the Report as did this and the other City unions. In its Report, the Task Force recommended a combination of cost reduction measures and an abandonment of the “pay-as-you-go” model which had been in use since 1983. Foremost among its recommendations was moving to a “defined contribution” plan for retirees since it found that the present system was simply unsustainable. It mandated funding the Annual Required Contribution (ARC) to an irrevocable Trust Fund set aside for the sole purpose of funding the retiree health benefit obligation in annual amounts such that the existing Actuarial Accrued Liability will be amortized over thirty years and the future annual medical claims against the Trust assets will be met. For 2005 the net amount necessary for this purpose was $19.2 million.

Since the Task Force Report was issued the State Legislature has passed a bill authorizing the creation of the irrevocable trust fund for this purpose to be administered by PERA. As of July 2007 the City has funded the trust with $3 million. $1.5 million of this came from utility rate increases and the other $1.5 million from the Community Investment Fund. The City intends to put another $8.5 million from the Community Investment Fund into the Irrevocable Trust fund as investments mature. It was also agreed that another $1.2 million will be put into the irrevocable trust annually from the Community Investment Trust Fund.

The Task Force Report recommended a “shared sacrifice” between the City and its employees to solve this “crisis.” This involved a combination of raising property taxes, asking the legislature for help, raising utility rates, reducing costs of administration by reducing the number of health plans available to employees, drug importation, etc. Many but not all of these recommendations have been adopted. This and other Unions have agreed to move all active employees to one health plan (Plan 3A) and have also agreed to a reduced prescription drug benefit. The City Council passed a resolution raising property taxes but this was vetoed by the Mayor. However, property taxes will be increased starting in 2008 which will produce about

$350,000 annually and which will gradually increase to $1.2 million annually. There has been a utility rate increase and the City has contracted with a prescription drug manager to effectuate more savings. The City has indicated its intent to move all current retirees to Plan 3A once all of the City's active employees are on that plan. All of these additional revenues, however, will not be sufficient to fund the entire liability.

FINAL POSITION OF THE UNION

The basic components of the Union's proposal can be summarized as follows:

1. For employees hired before April 26, 2004 who retire after 20 years the City will provide free single and dependent coverage for life. The coverage will be the same as that provided to active employees.

2. For employees hired before April 26, 2004, who retire after 15 years but less than 20 years of service, the City will provide free single and dependent coverage for life under Plan 3 only.

3. For employees hired after April 26, 2004 who cease employment with the City, there will be a percentage sharing of the premium cost with the employee's share decreasing with his or her length of service.

4. In addition, commencing January 1, 2008, the City shall contribute an amount equal to one percent (1%) of the employee's basic monthly pay into a post employment health care savings account.

FINAL POSITION OF THE CITY

The City's proposal can be summarized as follows:

1. The City proposes to continue to provide, free of cost to the employee, benefit Plan 3A for employees hired on or before December 31, 2006.

2. For employees hired on or after January 1, 2007, after 36 months of continuous employment, the City will make a one time deposit of $12,000.00 into a post employment health care savings plan account.

3. In addition, commencing January 1, 2008, the City shall contribute an amount equal to one percent (1%) of the employee's basic monthly pay into a post employment health care savings account for all active employees.

ARGUMENTS OF THE UNION

The Union's arguments in support of its final position on health benefits for retirees are summarized below.

1. The value of what the Union's members gave up in 1983 to receive the retiree health benefit had far more value than what the City is now proposing to give in exchange for it.

2. The City's poor administration of the retiree health care benefit has greatly exaggerated the financial difficulty it faces in financing the benefit. The CBAs the City has with all if its Unions provide that retired employees ". . . shall receive hospital-medical insurance coverage to the same extent as active employees. . . ." Notwithstanding this language, the City has not imposed higher pharmacy co-pays on retired employees that have been negotiated for active employees. Furthermore, it has allowed retired employees additional benefits, that the active employees have negotiated, such as transplant surgeries, etc. that were not allowed under earlier health insurance plans. The City has therefore increased its retiree health insurance costs by giving the retirees higher benefits than they had at the time they retired (for example, transplant surgery) and have also continued to give retirees the benefits they had when they retired (for example, low prescription drug co-pays). The end result is that the City has provided its retirees better health insurance than it provides it active employees.

3. The AAL liability of the City has been greatly reduced by the Minnesota Legislature's passage of a statute allowing Duluth to place money in a post employment benefits account administered by PERA. The City has estimated that passage of this Act will reduce the AAL by a third or approximately $93 million.

4. The Police Union along with the Fire Fighters, Supervisors, Confidential Unit employees, and AFSCME Local 66 members, realizing that solutions to both the active health care and

retiree health care issues should be achieved through universal language changes, twice asked the City to enter into joint negotiations specific to those issues. The City twice rejected joint negotiations.

5. The Union has fulfilled the Task Force recommendation that active employees, through negotiations, reduce the AAL by $29 million by agreeing to have all of its members and future retirees go to Plan 3A and by agreeing to a reduced prescription drug benefit. The City has estimated that by having all participants who retire in the future go to Plan 3A the City will reduce the AAL by $35.4 million, or with an 8.5% discount rate, as now possible with the establishment of the PERA administered trust, the AAL reduction may be as much as $144.7 million. If the City also requires all current retirees to move to Plan 3A it estimates that will decrease the AAL by $61.7 million. The estimated AAL reduction if the City moves all current retirees to Plan 3A, using a 8.5% discount rate is $161.2 million.

6. The Task Force has recommended that local property taxes should be increased over a four year period producing $2.4 million annually. In order to fulfill the Task Force proposal that local property be raised to contribute to the "shared sacrifice," the City Council passed a resolution on September 11, 2006 calling for a $600,000 per year tax increase for the purpose of funding the retiree health insurance benefit with projected increases over the next four years to comply with the Task Force recommended $2.4 million local property tax annual increase. This resolution was never implemented because of a veto by the Mayor.

7. The City's position to eliminate entirely the retiree health care benefit for all new hires after December 31, 2006 and only replace it with a $12,000 payment, after three years of employment, is totally unreasonable and inadequate to fund post-retirement health care costs. The 1% that the City has agreed to pay to each employee's health care savings account starting in 2008 is payable to all employees, not just new hires, so it is not consideration for new hires

giving up the retiree health care benefit. This 1% contribution to each employees' health care savings account was agreed to by the City in exchange for the Union's agreement that all of its members would be on Plan 3A.

ARGUMENTS OF THE CITY

The City's arguments in support of its final position on health benefits for retirees are summarized below.

1. The City is required by law to present a balanced budget to the city council. Revenue sources are not sufficient to pay for expenses. There are no new sources of revenue. The City faces a sizable budget shortfall of $5.4 Million for 2008. This is the largest budget shortfall in the City=s history. Medical costs continue to soar through no fault of the City, wages have increased and the State has required cities to increase their employer PERA contributions to fund pension benefits for public safety employees.

2. Current retirees and city employees enjoy health care benefits paid for entirely or largely by the Employer. The City is self insured for hospital-medical benefits. Premiums represent the dollars deposited and spent by the City into the group health care fund for claims, admin fee, etc. Funds spent on medical benefits have increased drastically since 1997. In 2002, the number of retirees exceeded the number of active employees. This gap between active employees and retirees continues to grow as employees such as police and fire retire well before the age of 65 and retiree longevity increases. Health care benefits cost the City nearly $10.5 Million in 2006. From the claims period of May 2005-April 2006, as compared to May 2006-April 2007, medical claims have increased by 21%. Given the recent claims increase and the increase in the number of retirees, the City cost of providing health care benefits to retirees is expected to jump by 15% in 2008. Based on these factors, the City projects a conservative

$1.8 Million increase in the cost of retiree health care benefits. By 2010, medical benefits for retirees and actives will cost the City nearly $17.5 Million.

3. The City=s difficult financial situation is aggravated by the state mandate requiring cities to increase their employer PERA pension contributions for public safety employees. The value of the employer paid portion is tied to compensation so as compensation rises, the amount paid by the City also increases. The legislation results in a total increase of over 50% in police and fire pension costs to the City.

4. The City is obligated to maintain an undesignated fund balance. The purpose of this unforeseen contingency fund is to absorb unpredictable revenue shortfalls or expenditure increases. The fund is needed to ensure cash flow levels, maintain favorable bond ratings and to serve as a source for investment. The City has not maintained the minimal balance as required by the city council since 2005. The undesignated fund balance is projected to remain below the required level for 2008 as well.

5. As there are no new sources of revenue, the City must cut services and cut expenses in order to balance the budget. The City has responded responsibly to the loss of revenue and increase in expenses. In 2004 Duluth instituted a hiring freeze in response to the loss in LGA and to prevent adding to the retiree health care liability Since 2002, the City has balanced its budget by cutting over 50 full-time budgeted positions. Every department has been affected, except police and fire. Layoffs are now being considered and each city department has been asked to make massive cuts of 15% in order to address the budget shortfall.

6. The City does not have the ability to pay the Union=s demand and continue City services in light of the revenue sources. The Union=s approach is to tap into the Community Investment Trust (CIT) and tourism revenue. The CIT is already being spent and its balance must be maintained to preserve the City=s bond rating. By law, the tourism fund can only be used for

tourism related activities. It is not available to pay employee salary and benefits. If the City pays for a demand more than is budgeted for, the City will have no choice but to reduce expenses by reducing services to the public and laying off working employees.

7. As of January 1, 2005, the accrued actuarial liability (AAL) for retiree health care benefits for retirees and current active employees was nearly $280 Million. Under the current Apay as you go@ system, the City=s AAL is projected to reach over $404 Million by year 2014. To fully fund the present liability, the City would have to make an annual required contribution (ARC) of $26 Million in 2005 and roughly $25 Million every year thereafter. Even at that exorbitant contribution rate, the unfunded AAL would still be $230 Million in 2014. By the summer of 2006, the AAL had ballooned to $301 Million.

8. To solve the crisis, the Task Force issued fifteen recommendations, the first of which was to offer new hires a more affordable defined contribution retirement health plan. Under a defined contribution plan, the City irrevocably funds a specified amount, which once paid, results in no further liability of the City. Costs are known and the liability does not continue to grow. The City=s proposal does exactly that. It deposits the sum of $12,000, a substantial defined contribution, into a health care savings plan account for new hires. There is no change to current employees. The $12,000 is deposited tax free, earns interest over time and is taken out tax free by the employee. Once deposited, the $12,000, and all earnings, belong solely to the employee and is portable should the employee cease employment with the City. New hires can still participate in the City=s retiree health plan, but at their own expense.

10. Almost universally, arbitrators use internal consistency as the standard that determines health insurance benefits. Retiree health care benefits have been essentially uniform across the bargaining units. Uniform benefits remain the City=s goal, are fair to all employees and cost effective to administer. The supervisors, firefighters and confidential units

have all agreed to a defined contribution plan for new hires. They have all agreed that the earned benefit chart, which provides free retiree health care after twenty years of service, applies to all existing employees. This chart does not impact the Union as most of their members retire with over twenty years of service. Under the Auniversal language@ articles in the supervisor and confidential agreements, those units can reopen health care benefits if the City negotiates different language with another union. The firefighters are also able to reopen negotiations on that issue in their Aunresolved issues@ article. If the Union=s demand is awarded, these three units will demand equalization of benefits. The supervisory association has already demanded to reopen their contract in light of the 1% into the health care savings plan account, which was given to firefighters and confidential. Continuation of free health care at retirement for police will result in a complete undoing of all the progress reached in attempting to create a sustainable system for the benefit for current employees. Future negotiations will be futile as groups realize they have nothing to lose and everything to gain by going to arbitration.

11. Contrary to the Union=s position that the City has not “shared the sacrifice”, the City has taken steps to address this serious issue. City officials successfully lobbied the legislature to create a trust, unique to Duluth, which allows the City to set aside money, while earning interest, in an irrevocable trust. $10 Million has been allocated for that trust as CIT investments mature. In 2006, the City Council raised utility rates and allocated a portion of those rate increases for OPEB purposes on an annual basis. The 2007 amount is $2.3 Million. Up to $1 Million is also being transferred into the OPEB irrevocable trust from the Group Health Fund. The City is also implementing a pharmacy benefit manager program, which hopefully will realize a cost savings. While these steps reduce the liability, it still poses a difficult problem for the City in future years.

DISCUSSION ON RETIREE HEALTH BENEFITS

This was the most hotly contested issue at the hearing and the one to which most time and attention was spent in the presentation of testimony and in the Briefs. There can be no question that the City of Duluth views the problem of its unfunded liability for health care benefits to retirees to be so serious as to present a very real possibility of forcing the City to seek relief from the Bankruptcy Court.

A lengthy discussion of the issue here would serve no real purpose as it would necessarily involve rehashing the above arguments of the parties. Suffice it to say that the City has persuaded the Arbitrator that its position must be awarded. Although the Union raised some valid points, particularly in regard to the projected cost savings that will be realized by moving all of its active members to a single health plan and reduced pharmacy benefits, these savings, even when combined with the increased revenues from the various measures adopted by the City, will be insufficient to "tame the gigantic gorilla" that is this unfunded liability. The Task Force was absolutely right. It is imperative that the City move to a defined contribution plan for new hires.

Similarly, the Arbitrator is not persuaded by the Union's arguments that the City is not "sharing the sacrifice." Although the City may not be adopting every step the Union or Task Force has suggested, the Arbitrator believes it is making significant sacrifices and taking prudent steps to solve this problem.

With full knowledge that this is conventional and not "final offer" arbitration, the Arbitrator is adopting the City's final position without change. There is no way that this Arbitrator has the wisdom, training, expertise or information to fashion a plan on this complex issue that is materially different than that offered by one or the other party that would make any economic sense. The Arbitrator did entertain the possibility of increasing the amount of the one-time contribution to the employee's health savings plan but decided against it because there was no evidentiary basis for determining what greater amount would be appropriate. If such a change were awarded it would have necessarily been a completely arbitrary figure. The Arbitrator does not believe that doing so would be appropriate.

AWARD ON RETIREE HEALTH BENEFITS

The City's final position on certified Issue Number 4 is awarded. Article 20 shall be modified as reflected in the City's proposed language.

ISSUE 5---ACTIVE MEDICAL INSURANCE-PROVIDED COVERAGE AND FITNESS PROGRAM—ARTICLE 19

DESCRIPTION OF PRESENT COVERAGE AND FITNESS PROGRAM

PRESENT COVERAGE

Duluth City employees are covered by a self-funded plan. The City puts money into a dedicated fund. The money is only used to run the program (i.e., to pay medical bills and cost of administration). Monthly premiums are calculated according to a universal formula in the labor contract. For single coverage employees and retirees, regardless of coverage, the City pays the entire premium cost. Family coverage employees pay a negotiated and small percentage of the premium. The bulk of the premium is paid by the Employer.

Both parties propose one health care plan known as Plan 3A. This is the plan the other three bargaining units have agreed to. This plan is currently available under the collective bargaining agreement and provides coverage up to $2 Million. Plan 3A requires employees to pay a limited deductible and involves sharing of medical expenses between employer and employee up to an out of pocket maximum. Nearly all employees in this bargaining unit with family coverage are on Plan 3A already. Having one health care plan is no change for them.

Plan 3A involves a risk to the single employee of an out of pocket maximum of $1,250 per year for co-pays, etc. This is a change from what a single employee experienced under other health plans, particularly Plan 4. Under the current contract, the City provides $50 per month to offset that risk.

FITNESS PROGRAM

The City currently provides a work out room in the City Hall that is available to police officers 24/7. The room contains Nautilus machines, treadmills, etc. It is maintained through a collaborative effort by police employees. The City previously provided a health care club reimbursement program under a city policy. The benefit was funded through reimbursement money received from the State and provided one hour per week for an officer to use while on duty. It was discontinued in December, 2005 when the funding for the program expired.

FINAL POSITION OF THE UNION

The Union's proposals are summarized as follows.

1. For calendar year 2007 the City will contribute $100 per month for single employees enrolled in Plan 3A. Effective January 1, 2008, the Employer will make monthly deposits to the flexible spending accounts of single employees enrolled in Plan 3A an amount equal to one-twelfth of the yearly deductible and maximum out-of-pocket expenses of Plan 3A.

2. The Union proposes the addition of the following new language to the CBA:

> 19.12. Fitness Programs Reimbursement. The Employer agrees to reimburse full-time employees up to $40 each month for health or fitness program membership fees or $20 each month to the Police Fitness Center Account of the Duluth Police Credit Union. To be eligible, employee must provide proof of health or fitness membership payment or provide a record of regular use of the Police Fitness Center. The Employee agrees that he or she shall apply for

any corporate discounts available from the Health or Fitness program in which membership is held.

FINAL POSITION OF THE CITY

The City's proposals are summarized as follows.

1. Under the City=s proposal, the City continues to pay 100% of the premium for the single employee and 80% of the premium for the employee with dependents. There is no change to the current contract in this regard. The City proposes to increase its monthly contribution which it makes for the single employee into a flex spending or deferred compensation account from $50 to $75 per month.

2. The City proposes no language regarding a fitness reimbursement program.

ARGUMENTS OF THE UNION

The Union's arguments in support of its final position on active medical insurance are summarized below.

PROVIDED COVERAGE

Under the Union's proposal, if an employee does not use the money deposited into his flexible spending account by the end of the year, the balance will be deposited into the City's Group Health Fund. This change will minimize the potential cost to the employee who chooses single coverage while allowing the City to go to a single plan. Even if the Union's position is awarded there will be a savings to the City because the Union members will now have to pay the bill and seek reimbursement and this will discourage them from incurring unnecessary medical expenses. The cost to the City of increasing its contribution from $75.00 to $100.00 per month into the flex account of each employee will only cost the City an additional $5,890 in 2007 and that amount will only increase slightly in 2008 and 2009.

FITNESS PROGRAM

A number of health care insurers have recognized that people who stay physically fit have a significantly lower incidents of medical claims than people who don't and have accordingly given their members credit for a discount on their monthly fitness center memberships to encourage physical fitness. The Firefighters 2007 - 2009 CBA with the City provides for a $30 per month reimbursement.

The City's refusal to provide any reimbursement to police officers for monthly fitness center memberships is based partly on its claim that it already provides a fitness room. The workout available to a police officer in this small fitness room does not compare to the workouts available to a police officer at a fitness center such as the Duluth YMCA which is located only a block from Police Headquarters. The Duluth YMCA has a swimming pool, multiple basketball courts, a fitness center with many aerobic training devices such as stair steppers, rowing machines, treadmills and a complete set of nautilus equipment.

The City is also in error when it claims that it provides this fitness room to the Union members. The only contribution that the City makes is the small space the fitness room is located in. The City has not provided funding to maintain or purchase equipment in the fitness room. Because of the inadequate work-outs available in this fitness room only a small percentage of Duluth's police officers use the room. If all 130 union members attempted to use the fitness room they would find that it was too small to accommodate them.

ARGUMENTS OF THE CITY

The City's arguments in support of its final position on active medical insurance are summarized below.

PROVIDED COVERAGE

The increased contribution of the City covers most of the maximum out of pocket expense a single employee could incur under Plan 3A. The risk to the single employee is minimal. The maximum financial exposure to the employee is $350 a year, which is only reached if the employee=s medical expenses approach $5,000 per year. This monthly contribution was agreed to by the other three bargaining units. The Union=s demand of $100 per month is a better health benefit than the other three bargaining units receive.

The Union seeks credit for giving up other health care plans, but then proposes additional compensation, which results in effectively maintaining costly Plan 4. The Union proposes to double the current employer contribution. At $100 per month, the single employee would receive $1,200 per year from the City to offset the deductible and out of pocket maximum. Unless the single employee incurs $5,000 in medical expenses, the amount becomes a windfall. The Union demand means the employee has a maximum exposure of $50 per year. With this demand, there is no cost savings in going to Plan 3A. A fifty dollar risk creates no incentive to be judicious in the utilization of medical services. It defeats the co-pays and deductibles under Plan 3A because the employee is nearly reimbursed for all co-pays and deductibles. Essentially, the Union=s proposal results in Plan 4, the plan the other units recognized as a problem to correct, with an increased $2 Million lifetime cap. (Plan 4 has a $1 Million cap on benefits.)

FITNESS PROGRAM

The existing fitness room is seldom used. The City has received no complaints about the room=s availability, its condition or the nature of the equipment. When the former health club reimbursement plan was in effect, only about 25 out of roughly 150 officers signed up for the benefit. When it was discontinued after the State reimbursement monies decreased, no officer complained. The labor management insurance committee, in which the Union participates, considered this benefit for all employees and rejected it as too costly. If awarded, it would become an expense that the police department would take out of the training budget.

DISCUSSION ON ACTIVE MEDICAL INSURANCE

PROVIDED COVERAGE

The City's arguments on this issue are persuasive. The changeover from Plan 4 to Plan 3A presents a relatively small additional risk exposure to single employees. The agreed to additional contribution of $25.00 per month by the City offsets much of this additional exposure. Finally, the City is correct in pointing out that the Union's demand on this point is a departure from its own stated position in favor of uniformity between bargaining units on health plan benefits. Finally, the Union's claim that it is making financial sacrifices and saving the City significant money to cure the retiree health plan problem by moving all of its employees to Plan 3A is inconsistent with a proposal for a benefit which negates at least some of the purpose and savings of that move.
The City's position on this issue will be granted.

FITNESS PROGRAM

The Arbitrator did view the exercise room available to the officers. The equipment seemed well maintained and probably adequate for a decent workout. On the other hand, it cannot compare with the facilities of a full service health club which provide swimming pools, tracks, etc. The Arbitrator has tried to apply the principle of internal uniformity between employee groups for "fringe benefits" on other issues in this case. This is based on all of the obvious reasons for such uniformity usually cited by employers. Just as the Union cannot have it both ways on health insurance, the City cannot have it both ways on internal uniformity of fringe benefits.

The Arbitrator was presented with evidence that Duluth firefighters enjoy a $30 per month health club credit similar to the $40 plan being sought here by the Police Union. This benefit was $20 per month in the 2004—2006 contract and was raised to $30.00 each month in the 2007—2009 contract. The Arbitrator sees no reason why firefighters should enjoy a greater benefit than do the police in their fitness program, particularly since the firefighters already apparently enjoy an enhanced wage position *vis-à-vis* the police based on the job point values established by Duluth's Pay Equity study. Both occupations require a high degree of physical fitness of their practitioners. Accordingly, the Arbitrator has concluded that the police should enjoy the same opportunity as the firefighters to have a $30 per month credit on a health club membership.

AWARD ON ACTIVE MEDICAL INSURANCE

1. The Final Position of the City is awarded on the coverage to be provided. The City's proposed changes to the language of Article 19 of the Collective Bargaining Agreement shall be adopted.

2. The Union's Final Position on the Fitness Program is awarded as modified herein. A new Article 19.12 shall be added to read as follows:

> The employer will reimburse to the employees a maximum of $30.00 each month, of the actual cost for the use of facilities involved in the employee's participation in an approved physical fitness training program. The employee shall be responsible for furnishing, upon demand, proof of actual costs incurred and training activities engaged in. The employee shall apply for any corporate or other discount(s) available from the health or fitness program in which membership is held.

ISSUE 8---MASTERS POLICE--ELIGIBILITY—ARTICLE 48.6

PRESENT CONTRACT LANGUAGE

Article 48.6 of the CBA reads as follows:

> An employee cannot receive pay awarded through the Master Police Officer program at the same time that the employee receives field training officer pay pursuant to Article 8.8 of this Agreement; trainer pay pursuant to Article 8.9 of this Agreement; and investigator pay pursuant to Article 8.10 of this Agreement

FINAL POSITION OF THE UNION

The Union proposes the following changes in the language of Article 48.6:

> An employee cannot receive pay awarded through the Master Police Officer program at the same time that the employee receives ~~field training officer pay pursuant to Article 8.8 of this Agreement~~; trainer pay pursuant to Article 8.9 of this Agreement; and investigator pay pursuant to Article 8.10 of this Agreement, but is allowed to receive this pay while receiving Field Training Officer or Police Trainer Pay pursuant to Article 8.8 of this Agreement.

FINAL POSITION OF THE CITY

The City proposes no change in the existing contract language.

ARGUMENTS OF THE UNION

The Union's arguments in support of its final position on Master Police Eligibility are summarized below.

The final position of the City regarding PTO pay is to keep the clause under Article 48.6 that requires the Union's members give up Master pay if accepting PTO pay. The final position of the Union is to allow PTO's to keep the Master pay in addition to PTO pay. All other training pay in article 8.9 would remain at one (1) dollar an hour, and would also be subject to article 48.6 of taking either trainer pay or Master pay.

The Duluth Police Department recently changed programs for training new Officers. This program calls trainers PTOs (Police Training Officers). Historically trainers were called FTOs (Field Training Officer).

The Current CBA provides Field Trainer Officer (pay) of One (1) dollar per hour while training. Article 8.9 details "Trainer Pay" which also provides for one (1) dollar an hour for Officer's who train in other areas of the department such as firearms' instructor, while engaged in that training. In 2004, CBA language was added allowing for a "Master Police Officer Program" (Article 48). This program was created to offer incentives to Patrol Officers to continue their education, volunteer for department needs, and be active in the community. Each year Patrol Officers must fill out an application to receive the Master Police Officer pay for the next year, based on a point scale, with four different levels of pay incentive that can be reached. One way to earn points is to be a PTO. However, under Article 48.6, officers who choose to take Master Police Officer pay are not entitled to the one (1) dollar an hour incentive while training.

The PTO program is very labor intensive for the trainer, and it also requires over 40 hours of training to become a PTO. Training of new Officers is very important to the overall good of the department and it is in the City's interest to have the best Officers serve as PTOs. Currently the incentive to be a PTO (two points per year for Master Police Officer Pay) does not adequately compensate Master Police Officers to become a PTO. Many Master Police Officers are able to get points by doing other activities in the department such as intoxilyzer operator, defensive tactics instructor, SWAT, firearms instructor, etc.

Even accepting the City's estimate of the cost of paying field training pay to master cops, the cost is modest in comparison to the benefit of having new officers trained by the best qualified police officers available. The City has estimated that the total cost of the Union proposal in 2007 when there will be 11 recruits, only 9 actually hired, is only $5,148 and this will be cut by more than 50% in 2008 when there will only be 5 recruits.

ARGUMENTS OF THE CITY

The City's arguments in support of its final position on Master Police Eligibility are summarized below.

The Union=s demand is not consistent with the intent of the program and is an added expense to an already severely strained city budget. The purpose of the master cop program is to recognize officers who have shown a commitment to high work standards through their education, experience and service to the community. Once an officer receives the designation of master cop, he or she does not lose it. About 30-40 officers have this designation.

The City has already agreed to raise the amount of field training officer pay (FTO) from $1.00 per hour to $2.50 per hour. The Union proposal of paying an officer master cop pay and field training officer pay at the same time results in double dipping for the same level of work. The designation of a Amaster cop@ does not mean an officer is performing additional or more complicated work when he or she engages in training recruits out in the field. The City already recognizes the additional duties an officer performs when working as a field training officer and compensates the officer for those training duties. There is no compelling reason to award the Union=s proposal.

DISCUSSION ON MASTER POLICE ELIGIBILITY

The Union's argument is largely based on the lack of incentive for a master cop to engage in training activities if he or she loses the master cop pay differential while doing so. On the surface this is an appealing argument. However, it seems to this Arbitrator that it is largely offset by the raise in PTO pay from $1.00 to $2.50 per hour. Also, one must assume that the City is also interested in having its "best and brightest" engage in training functions, and that if the existing system was a serious disincentive to attracting master cops to being PTOs the City would recognize the problem and agree to the Union's proposal. Although the Union's argument has some logic on its face, there was no evidence of the adverse effect of the current language on attracting master cops to act as PTOs. For these reasons, the Arbitrator is not inclined to grant this request.

AWARD ON MASTER POLICE ELIGIBILITY

The City's final position is granted. There shall be no change to the language of Article 48.6.

Respectfully Submitted

Stephen A. Bard, Arbitrator