

**IN THE MATTER OF ARBITRATION
BETWEEN**

**LAW ENFORCEMENT LABOR
SERVICES, INC., LOCAL NO. 113**

Union,

and

THE CITY OF NEW BRIGHTON,

Employer

**ARBITRATION DECISION AND
AWARD**

BMS Case No. 06-PN-326

Arbitrator:

Andrea Mitau Kircher

Date and Place of Hearing:

April 19, 2006
New Brighton City Hall,
New Brighton, Minnesota

Date Record Closed:

May 5, 2006

Date of Award:

June 5, 2006

APPEARANCES

For the Union:

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For the Employer:

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INTRODUCTION

Law Enforcement Labor Services, Inc., Local No. 113 (“Union”) is the certified bargaining representative for the essential employees in the classifications Patrol Officer and Detective employed by the City of New Brighton Police Department (“City” or “Employer”). The City and the Union are signatories to an expired collection bargaining agreement (“Contract”) covering the period from January 1, 2004 through December 31, 2005.

On or about November 21, 2005, the parties petitioned the Bureau of Mediation Services for interest arbitration. The Bureau certified the matter for arbitration, and the parties duly submitted their final positions and selected the undersigned arbitrator.

A hearing was conducted on April 19, 2006, at the New Brighton City Hall. At the hearing the arbitrator accepted exhibits into the record, witnesses were sworn, and their testimony was subject to cross-examination. Post-hearing briefs were submitted postmarked May 3, and the record closed May 5, upon receipt of the last brief.

ISSUES

The Bureau certified 15 issues for arbitration:

1. Duration – Art. 27
2. Wages 2006 – Art. 22
3. Wages 2007 – Art. 22
4. Insurance – What shall be the City’s insurance contribution in 2006? - Art. 17
5. Insurance – What shall be the City’s insurance contribution in 2007? - Art. 17
6. Specialty Pay – Art. 22
7. Uniform Allowance – Art. 19
8. Seniority – What role should seniority play in shift bidding? - Art. 9]
9. Shift Differential – New Article.
10. Call Back Time – What shall be compensation for call-backs? - Art. 15
11. Officer in Charge – What shall Officer in Charge pay be? – Art. 22.5
12. Sick Leave – Art. 24
13. Field Training Officer – What shall the FTO pay be – Art. 22.6
14. Holiday – Should new holiday(s) be added to the contract? – Art. 25

15. SELF Program – Art. 21

At the start of the hearing, the parties announced the resolution of several issues. They agreed to a two year Contract duration, effective January 1, 2006 through December 31, 2007. Additionally, the Union withdrew Issue 4, agreeing to the City's proposed contribution for health insurance for 2006. The Union also withdrew Issue 9, shift differential; and Issue 11, officer in charge pay. The City agreed to the Union's proposal on Issue 8, seniority shift bidding. Ten issues remain in dispute. Of these, Issues 2 and 3, wages for 2006 and 2007, will be discussed together.

ISSUES No. 2 and 3 WAGES

POSITIONS OF THE PARTIES: The Union proposes a 4% wage increase for each year of the Contract. The Employer proposes a 3% wage increase for each year.

DISCUSSION: Because interest arbitration is not designed to supplant collective bargaining, but to encourage it, an arbitrator's decision should be compatible with the contract the parties themselves might have reached if they had been able to conclude a voluntary settlement. The following standards, often quoted by arbitrators provide a framework for consideration: ability to pay, statutory considerations, internal comparables, and external market conditions. These criteria suggest that the decision should have a rational basis. The party proposing change is generally considered to have the burden of proof, demonstrating the reasonableness of change by clear and compelling evidence.

1. Ability to Pay.

The Union argues that the cost difference between its proposal and the Employer's proposal is only \$21,286.80, and that the City has sufficient reserves to fund

the requested 4% increase. In its 2006-2008 strategic plan, the City is projecting a \$1.2 million surplus in the General Fund for 2005.

The Employer argues that with roll-up costs, the wage increase would be substantially larger than the amount calculated by the Union. The Employer seeks to meet its budgetary goals and to avoid problems managing its operations within its financial resources. The City budgeted for 3% wage increases in 2006. The Employer's difficulties in balancing its budget are real, according to Financial Director Dan Maiers, citing the Minnesota Legislature's reductions in Local Government Aid in 2004, a loss of \$748,000.00. The Legislature also imposed limits on the amount the City could levy through property taxes for 2004 to make up for these deductions. In 2005, these limitations were removed, but the City is not willing to impose large tax increases again, and funds taken from the general fund and the unreserved fund balance have been used for operating expenses and capital projects, causing the unreserved fund balance to fall below levels associated with good financial management. Finance Director Maiers described various difficulties that needed to be overcome to balance the budget. Investment earnings have decreased significantly in recent years. Additionally, the financial resources of the City are not likely to increase significantly in the near future because of its aging population and its lack of substantial new economic development. The City does not argue that it is unable to pay the increase of 4% which the Union requests, but that a 3% increase is more reasonable for a financially sound outcome.

The City has made efforts to plan for contingencies, has not been subjected to sudden unexpected financial catastrophe and is in a financially viable condition, so ability

to pay is not a seriously limiting factor in deciding whether the wage increase should be 3% or 4% for the approximately 19 employees covered by the Contract.

2. Statutory Considerations.

The Union claims that the Minnesota Local Government Pay Equity Act (“Pay Equity Act”) supports its claim for an annual 4% wage increase for 2006 and 2007. The City is currently in compliance with the Pay Equity Act, and the increases the Union proposes will not adversely affect that compliance. The Pay Equity Report sent to the State Department of Employee Relations includes a statistical concept known as the predicted pay level. The Union argues that police officer pay is below “predicted pay” by \$196.54 per month compared to other City jobs, so internal equity requires a larger pay increase for police officers. The Pay Equity Act itself does not require complete internal consistency among jobs; only that throughout a public jurisdiction, pay for employees in female dominated job classes must have a reasonable relationship to pay for employees in male dominated job classes. The unexplained predicted pay level differential noted by the Union may be evidence of inequity as it suggests, but it may be caused by other factors such as methods used in the underlying job studies or different pay plans. The evidence is inconclusive.

3. Internal Comparables.

Internal consistency in wage adjustments is thought by many arbitrators to encourage parties to settle their contracts at the bargaining table rather than through the arbitration process. See, Law Enforcement Labor Services, Inc. and Brown County, BMS Case No. 99-PA-1076 (Ver Ploeg, 1999). The Union correctly points out that over the last several years there have been instances where collective bargaining produced

somewhat different wage adjustments among the three City bargaining units. The Employer counters by demonstrating that for 2006, there is complete consistency. Both of the other bargaining units settled for a 3% wage adjustment for 2006, and the City provided a 3% adjustment for the unrepresented employees. The Employer argues that this is evidence of what the City and LELS would have agreed to if they had negotiated a voluntary resolution. No wage adjustments have been set for 2007, and the Union proposes that its requested 4% increase should be awarded, while the Employer argues no internal evidence is available and it is firmly entrenched at the 3% wage adjustment level.

For 2006, the City has a total of 86 employees, 19 of whom are in this bargaining unit. All of the other 67 employees, including the 5 Police Sergeant supervisors, have had wage adjustments of 3% for 2006. Unless there is a strong reason why the employees in this bargaining unit should receive a greater increase than the other employees, internal equity favors a corresponding 3% increase.

4. External Market

The external market is also a factor in deciding wage adjustments, especially for 2007, where there are no internal comparables, so relevant external comparables and other economic factors are important. At one time, the parties agreed that Stanton Group 6 was the best comparable group for New Brighton. Group 6 cities are suburbs which have populations from 10,000-25,000. New Brighton's population is at the higher end of this range, but as previously noted, it is an older suburb both from an economic standpoint and in terms of the average age of the population. In 2005, top pay for police officers in Stanton Group 6 was at an average rate of \$4,748.96 per month. The City paid its eligible employees about \$12.00 per month more than average in 2005. For 2006, 14

of these cities have settled. Of these cities, 13 adjusted pay by amounts ranging from 2.00% to 3.54% and one, North St. Paul, had an adjustment of 18.42%.¹ Because North St. Paul is an aberration and there is no evidence regarding the reasons for its unusual pay increase, it will be excluded from calculating the 2006 average increase rate. Calculating the average increase rate based on the remaining 13 cities, I find that the 2006 average top pay is \$4,891.00 per month. If a 3% increase were added to top pay for New Brighton, the 2006 pay rate would be \$4,903.83 per month or \$12.83 per month above the average for Stanton Group 6.

Since 2002, the City has proposed a different comparable group of cities than Stanton Group 6. This group of “benchmark” cities was assembled by an outside consultant who prepared a compensation study for the City, and these cities are allegedly comparable based on population, proximity, and other demographic factors. The Union has not agreed to use these cities as a comparable group. Four of the benchmark cities are also Group 6 cities, and four have populations above 25,000 and are not in the same Stanton Group. Of the eight benchmark cities, three have not settled, and of the five remaining, one does not employ police officers. The four jurisdictions that have settled appear to be providing general wage increases of approximately 3%.² Thus, a 3% increase for 2006 is the most reasonable wage adjustment compared with both groups of comparable cities.

The Consumer Price Index may be starting to show signs of rising, as the Union points out, but this factor does not compel a different outcome than the internal and external comparables which both support a 3% general wage adjustment for 2006.

¹ Union Exhibit 141

² One of the four benchmark cities settled for a 3% January increase and a .5% July increase, and another settled for a 2% January increase and a 1% July increase.

Less evidence was presented to suggest the appropriate wage adjustment for 2007. Stanton Group 6 indicates that of the 13 jurisdictions which have settled for 2006, five have a contract that extends through 2007. Of those contracts, 3% is the average increase. Of the benchmark cities, only one has settled for 2007, and it is an additional city paying 3% as a general increase. It is notoriously difficult to predict the Consumer Price Index, and internal comparables are not available. Absent clear evidence to the contrary, the interest arbitrator is ill advised to make changes that alter a bargaining unit's relative standing compared to the market, and no such evidence was presented here.

AWARD - WAGES

Issue 2: The general wage adjustment for 2006 will be 3%.

Issue 3: The general wage adjustment for 2007 will be 3%.

ISSUE 5 - INSURANCE -2007

Currently, disputed Contract provisions regarding health insurance read as follows:

Article XVII – Insurance

17.2. Effective 1/01/05, the EMPLOYER will contribute \$440/month for EMPLOYEES requesting individual health insurance and \$620 for EMPLOYEES requesting and qualifying for dependent coverage for the policy period January 1, 2005 to December 31, 2005. If premiums increase more than 20%, EMPLOYER will contribute an additional \$10/month for individual and dependent coverage policyholders.

17.3 Effective 1/01/01, The EMPLOYER initiated a cafeteria benefits program to provide more options to EMPLOYEES relating to overall benefit selection. The City's Health Insurance Program is included within the EMPLOYER'S cafeteria benefit program. In the future, as the cafeteria benefits program proceeds, the EMPLOYER intends to include the opportunity for EMPLOYEES to participate in a health insurance plan option that provides for a zero co-pay, 100% hospitalization insurance program.

The parties have agreed that the City will contribute \$470/month for Employees requesting individual health insurance and \$660/month for Employees requesting and qualifying for dependent coverage for the policy period January 1, 2006 to December 31, 2006. The insurer has not yet provided data concerning the plans and premium rates available to the City and its Employees for 2007.

UNION POSITION

With regard to the Employer contribution toward premium costs for 2007, the Union has proposed that the Employer contribute an amount equal to the 2006 contribution rate plus 75% of any premium increase. The Union also seeks to retain section 17.3 of the Contract, the zero co-pay, 100% hospitalization option.

EMPLOYER POSITION

The Employer's final position sent to the Bureau was to pay 75% of the insurance premium increase for policy year 2007, "based on the health insurance plan that provides for a \$20/co-pay and 100% hospitalization. The \$0 co-pay/100% hospitalization plan" [§ 17.3] would no longer be an available option in the cafeteria plan.

The day before the hearing, the Employer changed its final position and now proposes a 2007 contract re-opener for insurance. The Employer argues that this is the most reasonable position when no information on the new insurance plan is presently available and no contracts have settled for 2007.

DISCUSSION:

Arbitrators generally emphasize the value of internal equity in deciding questions of health insurance benefits. The only other bargaining units at the City are one Teamsters' bargaining unit, and a small unit of Sergeants also represented by LELS. The

Teamsters contract, which expires at the end of 2006, does not currently provide for a zero co-pay option, while the Contract continues that option through 2006. Internal equity is not the status quo in this case, and neither party directly bases its argument on this factor.

The Union argues that its position is preferable because a re-opener on the insurance issue puts them at a collective bargaining disadvantage. It maintains that at the end of 2006, the Employer will be able to claim that internal equity requires deletion of the zero co-pay option. Thus, it will be easier for the Employer to reduce Union benefits to the level of other employees. If arbitration results, the Union theorizes, the arbitrator will agree with the City, deleting this benefit based on the view that internal equity is the most important factor when deciding insurance benefits. The Union also argues that the party proposing change to an existing provision of a Contract must prove the need for such a change, and the Employer cannot do so under these facts. Additionally, the Union points out, Minnesota law provides that the Employer cannot delete or reduce the health insurance benefit from its cafeteria plan without its agreement:

The aggregate value of benefits provided by a group insurance contract for employees covered by a collective agreement shall not be reduced, unless the public employer and the exclusive representative of the employees of an appropriate bargaining unit...agree to a reduction in benefits.

Minn. Stat § 471.6161 subd. 5 (2006)

Nine of the eighteen members of this bargaining unit are currently on the zero co-pay insurance plan, and elimination of Section 17.3 is likely to cause a reduction of benefits for them.

The City does not now pay a percentage of the premium, but a flat dollar amount, so the Employer's first final proposal, to pay 75% of any premium increase, was

something of a compromise. It appears that the City had agreed to pay a percentage of the probable but unknown insurance premium increase if the Union agreed to drop its demand for the zero co-pay option. The Union asks the arbitrator to select its position because the City had agreed to pay 75% percent of the increase at one time. But this was only half of the Employer's proposal, and to award one half without the other would be a substantial change in the Contract, without any evidentiary support.

It is understandable that the Union wishes to protect its zero co-pay option, and that it is concerned that a Contract re-opener on health insurance benefits may be disadvantageous to its bargaining position. At this point, however, an insurance re-opener is reasonable, and it is not an unusual solution for jurisdictions with no insurance plan in place for the coming year. In an era where costs of health insurance are continuously increasing, the interest of a public jurisdiction in preparing a comprehensive insurance plan prior to negotiating with the Union outweighs the possible bargaining disadvantage to the Union. The City's insurance committee is currently working on the various health insurance options for 2007. The insurance committee includes representatives of bargaining units. When premium data for 2007 becomes available the Union representative will be among those who have access to that information, and negotiations will be more productive at that time.³

AWARD:

Delete outdated language in 17.1 and 17.2 and insert the agreed upon language for 2006.

For 2007, the parties will immediately draft contract re-opener language that corresponds

³ The Commissioner of the Bureau of Mediation Services has opined that Minnesota law provides essential employee bargaining units the ability to seek arbitration if negotiations reach impasse on a contract re-opener. *See*, Letter dated April 5, 2004, from James A. Cunningham Jr., attached as Appendix A to Employer's Brief.

to this decision.

ISSUE 6 – SPECIALTY PAY – Art. 22

POSITIONS OF THE PARTIES

The Union proposes to increase Detective pay by the same percentage as wages are increased to retain the current differential between detectives and police officers. For the School Resource Officer, the Union proposes an increase of \$100 per month. The Employer opposes both increases.

DISCUSSION:

1. School Resource Officer.

Article 22.4 currently provides that the School Resource Officer be paid \$25 per month in addition to regular pay, excluding the months of June, July, and August. The Union seeks a market adjustment for this position. Stanton Groups 5 and 6 cities pay a much greater differential than New Brighton for School Resource Officer work. The Union cites \$181.63 as the average monthly pay differential in Group 6 for this work. For Stanton Group 5, the average differential is even higher. The Employer points out that the Union's exhibit 227 shows that of 25 Stanton Group 6 cities, 11 do not offer specialty pay for this assignment at all. It is not clear, however, whether these jurisdictions assign police officers to School Resource work or if they do, what job duties these officers perform. Practices may vary widely among the jurisdictions.

Police Officer Mitch Singer, the City's current School Resource Officer, testified about his duties. He has been in this assignment for five school years at High View Middle School. This school provides special education and EBD student services for the whole district. Officer Singer works with these students and their families when they

have come to the attention of the Public Safety Department, and these students constitute a large portion of his caseload. He follows up on investigations made by other Patrol Officers concerning High View students. He handles the cases until the students leave the district, and describes these duties as similar to that of a social worker, although he has no advanced degree in this area.

The Deputy Director of Public Safety asked Officer Singer to take this assignment and report directly to him rather than to a Sergeant, as other Patrol Officers do. Initially, Officer Singer was interviewed by the High View Middle School Principal before he was offered the position. The position needs special skills, and Officer Singer has taken additional training for the job including annual continuing education courses as well as the additional training he takes to keep up his skills as a Patrol Officer.

In addition to the extra duties listed above, Officer Singer does investigation of school related crimes, and has revamped the school safety plan to deal with emergencies such as fire, bomb threats, etc. He has trained school personnel to help implement the safety plan. He teaches one-hour classes to students seven or eight times a year on subjects like conceal-and-carry laws and marijuana laws. Officer Singer also works with the deans on conflict resolution and does mediations with kids who have problems with others. In the summer, Officer Singer returns to Patrol Officer work.

As a School Resource Officer, Officer Singer estimates that his undesignated time during the school day may be from 10-30%. On a regular patrol shift, there is also undesignated time. On cross examination, he admitted that he likes working with students and that in essence, his work schedule could be considered advantageous. He also likes working as a Patrol Officer.

The Employer argues there should be no market increase for this job in 2006, because the City will be receiving approximately \$5,000.00 less in revenue from Mounds View, a jurisdiction with whom it had been splitting the costs of this position. Mounds View has decided to use the \$5,000.00 internally to fund another Sergeant position. The cost of this position is also shared with the local school district. According to Union Exhibit 216, for the 2005-2006 school year, New Brighton paid only 25% of the cost of the position. The agreement among the jurisdictions for the coming year was not part of the evidence, and the possibilities for amending it are not known.

The evidence strongly supports the Union's position that this job, as it is now constituted, requires not only the usual skills to perform the duties of a Patrol Officer, but also significant additional duties and responsibilities for which the incumbent of this job should be compensated. Because only one position is affected, the costs of this adjustment are well within the ability of the City to pay.

2. Detective

The City points out that employees assigned to the Detective position receive an extra \$270.00 per month (or \$3,240 per year) in specialty pay under the current contract. Compared to the market, the specialty pay is above average for Detectives. The Union bases its proposal, an increase matching the general increase (3%), on maintaining the internal differential between Detective pay and Patrol Officers' pay. The City argues that the current \$270.00 differential is 19% above the average of the benchmark cities, its favored comparable group, and it is above the flat rate differentials paid in Stanton Group 6 cities. The Union seeks to change the detective specialty pay increase to a percentage rather than the current flat dollar amount. There is neither sufficient evidence to support

this change in the pay structure, nor do the market comparables support an increase at this time.

AWARD:

The School Resource Officer differential will increase to \$125.00 per month. The Detective pay differential will remain at \$270.00 per month.

ISSUE 7 - UNIFORM ALLOWANCE – Art. 19

Article 19.3 Effective 1/1/05, Employees shall be allowed up to six hundred twenty dollars (\$610) [sic] for the purchase of the above items marked Clothing Allowance during the calendar year of 2005. The yearly amount may be carried over from one year to the next to a maximum of two consecutive years.

POSITIONS OF THE PARTIES

Although the language of the Contract is inconsistent, the parties agree that the current uniform allowance is \$610.00 per year. The Union seeks an increase to \$700.00 and the Employer has offered \$625.00. The Union also proposed an additional list of items that would constitute authorized purchases from their Uniform Allowance funds, which the City opposes.

DISCUSSION:

The Union bases its request for a \$90.00 increase over the two year contract on two main factors: 1) it estimates a 5-10% increase in the cost of clothing from one year to the next; and 2) the average uniform allowance for Stanton Group 5 & 6 cities is approximately \$650.00.

Some cities provide uniforms rather than a uniform allowance. In the City's preferred comparable benchmark cities, only two have settled on a uniform allowance for 2006, and both of these provide \$700.00 per month.

The City also argues that the Union employees do not need a large increase. Of the 17 LELS bargaining unit members,⁴ 11 carried a balance forward from December 31, 2005 into 2006. Some, however have a deficit balance and no explanation was offered by either party.

The Union has established that the City's uniform allowance is below the average uniform allowance, that external comparisons among police officers in other comparable jurisdictions is the most relevant factor to consider, and that inflation may occur. On the other hand, there may be no great need for change, because most employees have carried over a balance, averaging \$313.00. The City's proposal of an increase of \$15.00 indicates that it believes a small increase is reasonable. Based on all the foregoing, a \$40.00 per person increase is awarded, which approximates a 3% increase per year. This should be an adequate allowance for all bargaining unit members to purchase the City's required uniform and equipment on the Article 19 list, to prevent inflationary loss of buying power, and to place the City's uniform allowance within the range suggested by external comparables.

The Union also seeks to add a number of items to the list of eligible purchases. Of these, sunglasses will be added. The Sergeant's unit negotiated the addition of sunglasses, and it is likely that the City would have agreed to the same for the employees who work with the Sergeants, had the parties reached a voluntary resolution.

AWARD

Article 19.2 is deleted.

The first Article 19.3 will be renumbered 19.2 and will read:

⁴ The parties have stated that the number of employees in this bargaining unit are 17, 18 and 19 in the data submitted, and I have adopted their data without change.

Article 19.2 Effective 1/1/06 Employees shall be allowed up to six hundred and fifty dollars (\$650) for the purchase of the above items marked clothing allowance during the term of the contract. The yearly amount may be carried over from one year to the next to a maximum of two consecutive years.

Add sunglasses to the clothing and equipment list to correspond to the Sergeant's list.

ISSUE 10 -Call Back Time - Art. 15

POSITIONS OF THE PARTIES

The Union is seeking to increase the call-back provision from two hours at the overtime rate of pay to three hours at the overtime rate of pay. The Employer proposes no change.

DISCUSSION:

The current contract provisions have not changed since 1993. Similar to Patrol Officers, LELS Sergeants are subject to call backs, and their negotiated rate of overtime pay for call-backs is also a two hour minimum. External data does not show that the City is out of step with comparable cities on this issue.

There is insufficient evidence that the two hour minimum for call-back pay should be changed through arbitration.

AWARD

The City's position is awarded.

ISSUE 12 - Sick Leave – Art. 24

POSITIONS OF THE PARTIES

The Union proposes three changes in the sick leave article.

1. Change Section 24.4 from:

Section 24.4. Use for Funerals, Illness in Family. When necessary, up to three (3) days of sick leave will be granted to an employee because of death or critical illness of a member of the employee's immediate family.

To:

Section 24.4. Employees will be allowed to use sick leave for illness of a member of the employee's immediate family as provided by state and federal law.

2. Increase maximum accrual in Section 24.9 from 960 hours to 1440 hours.
3. Increase the percentage of accumulated sick leave paid out at the time of termination.

The City opposes all three changes.

DISCUSSION:

The City adopted a 12 hour shift system instead of eight hour shifts in January 2005. Both parties agree there are some advantages and some disadvantages to the new system. One result of the change is that the employees are accruing sick leave based on an eight hour shift rather than 12. The Union notes that employees are now required to take 12 hours of sick leave if they need a shift off due to illness, even though they accumulate leave at a the rate used for eight hour shifts. The Employer counters by arguing that employees work fewer days per year on the new system, 183 work days rather than 260, so there is probably less need to take time off for sickness. The Employer also argues that its current maximum sick leave accrual of 960 hours exceeds the average maximum sick leave accrual in comparable cities in both parties' favored comparable groups of cities. Based on these considerations, the evidence does not support a need for change in the current status of sick leave accrual. The same considerations apply to the proposed increase in cash payments at the time of termination.

As to the need for change in Section 24.4, cited above, although I agree that contract provisions should not contradict state and federal law, Section 24.4 deals with more than the need for leave when a member of an employees' immediate family is sick.

I am not aware of any statute that governs the amount of leave because of a family member's death, for example. Thus, the provision proposed by the Union appears to be incomplete, and further discussions between the parties concerning improved language is advisable.

AWARD

The City's position is awarded.

ISSUE 13 - Field Training Officer – Art. 22.6

Article 22.6 FTO – Any employee who is assigned Field-Training-Officer duty shall receive two (2) hours compensatory time per shift worked as an F.T.O.

POSITIONS OF THE PARTIES

The Union seeks to increase FTO pay to three hours of comp time and to add language making Detectives eligible for FTO pay when training a new employee or detective. The City maintains that no change is necessary.

DISCUSSION:

Matthew Voeller testified as a field training officer describing the responsibilities and duties of the job. He believes that the 12 hour shift puts more pressure on the FTO officers to do daily observations, write the necessary reports and train new employees on the computer information they will need on the job. Previously, FTO's worked 9 hour shifts with 5 days on duty and 3 days off. Under the new schedule, officers work 12 hour shifts with 3 days on and 3 days off. The new work schedule erodes the compensation offered employees for FTO work, according to the Union. Under the old schedule, the FTO's working a one month phase with a new officer, put in 180 hours of training and received 40 hours of compensatory time. When the Employer implemented the new

schedule, FTO's working a one month phase with a new officer put in 192 hours of training and only receive 32 hours of compensatory time.

The Employer argues that the duties and responsibilities associated with the FTO program have not changed in recent years. Further, under the SELF program, FTO Officers gain points that add up to cash payments.

Although some evidence favors the Union position, it is not clear how the interaction with the SELF program affects this issue, if at all, and the whole interrelationship would be better resolved in discussions between the parties. The same is true for the argument proposed by the Union to add FTO compensation for Detectives. The City does not now have a formal on the job training program for detectives who must have a minimum of three years experience, and in most jobs, some training by other employees is necessary but not formalized and paid for. Under the current thinking, Cities appear to have deemed that the public interest requires a uniquely formal field training program for new Patrol Officers for which they are willing to compensate current employees. The Union has not established by clear and convincing evidence the necessity for such a system for detectives.

AWARD

The City's position is awarded.

ISSUE 14 – HOLIDAY -Art. 25 POSITIONS OF THE PARTIES

The Union proposes to add Martin Luther King Day as a designated holiday for which employees are eligible for premium pay. The City opposes adding an additional holiday, arguing that the City already designates 10 days as days for which Officers receive premium pay for holidays.

DISCUSSION:

Martin Luther King Day is recognized as a holiday for all City employees except for those in this bargaining unit. It is both a recognized holiday for federal and state government. External city comparables show that the number of holiday hours for police officers varies. Of the four Benchmark Cities that have settled collective bargaining agreements for 2006 , each has a different number of holidays ranging from 9 to 12. The City did not provide information about whether these cities recognize this particular holiday. According to the Union, 19 of the 24 Stanton Group 6 cities include Martin Luther King Day as a holiday in their contracts, and the vast majority include more than 10 days for which Officers receive premium pay for holidays. Both internal and external comparisons favor the Union position on this issue.

AWARD

The Union Position is awarded.

ISSUE 15 - SELF Program – Art. 21

The acronym SELF stands for Skills, Education and Longevity Framework. The SELF program has been the subject of dispute between the parties for a number of years. Originally, it was included in the Contract in the 1990's as a replacement for the longevity/educational incentive system. Under the SELF program, an employee is eligible for additional wages, ranging from 3% - 9%, based on the employee's years of service, the possession of a Bachelor's degree and the completion of Specialty Certificates. It was originally a plan developed and proposed by the Employer.

POSITIONS OF THE PARTIES

The Union argues for retention of the program in its current form, and the

Employer seeks to delete it (its final position to the Bureau) or phase it out by limiting it to current employees but deleting it for new employees and replacing it with a longevity schedule. The current employees would become eligible for the longevity schedule at a point when they would not be subject to any financial loss.

DISCUSSION:

The Employer is eager to change the program because it has proved more costly than originally intended. In 2006, it will cost approximately \$130,200.00 and this represents 2% of the City's total tax levy.⁵ This is probably the same reason the Union is eager to retain the program. The Employer also argues that the SELF program should change because there has been a change in the underlying circumstances that warranted the SELF program. Many of the Specialty Certificates for which credit is given are now part of the basic job expectations for a Patrol Officer, and most Officers begin with a Bachelor's degree, a relatively recent development.

The Employer's suggested phasing out the SELF plan rather than deleting it abruptly, on the day before the arbitration hearing, and the Union may not have had sufficient time to consider the possibilities. Under Section 21.6A, deletion or modification of specialty areas that qualify for points under the program are to be made by mutual agreement between labor and management. Discussion should also be utilized and possibilities exhausted if the Employer wishes to delete all the specialty areas and additional compensation under this system and replace it with a new one. The Employer's proposal is a structural change apparently rewarding longevity rather than specific accomplishments. Although it is easy to see how the parties may be frustrated by the difficulties of change, the Arbitrator is persuaded that structural change in

⁵ Employer Exhibit 12.

compensation items is best accomplished through the give and take of collective bargaining rather than through arbitral fiat. It is not clear that the parties have had sufficient time to discuss and negotiate change based on the new Employer proposal.

AWARD

The Union position is awarded.

Dated: June 5, 2006

Andrea Mitau Kircher
Arbitrator