

BACKGROUND

The City of Wayzata (sometimes, the "Employer" or the "City") is a western suburb of Minneapolis, Minnesota. The population of the City is about 4,100.

The Union is the collective bargaining representative of the non-supervisory employees of the Employer who work in its Police Department (the "Department") -- seven employees, all of whom are classified as Police Officers. The Police Officers are supervised by the Chief of Police, one Lieutenant and one Sergeant, none of whom is a member of the Union's bargaining unit.

The Union and the Employer are parties to a labor agreement that has a stated duration from January 1, 2006, through December 31, 2006. Because they have not yet agreed to all of the terms of a new labor agreement, they continue to operate under the terms of their 2006 labor agreement, which I may sometimes refer to as the "current labor agreement." They have successfully negotiated some of the terms of their new labor agreement, but have reached impasse about several bargaining issues, described hereafter. In this proceeding, they seek to use the arbitration procedures established by PELRA to resolve the issues at impasse. The parties have agreed, however, that the new labor agreement will have a two-year duration, from January 1, 2007, through December 31, 2008.

On August 14, 2007, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to seven collective bargaining issues that are to be resolved in

this arbitration proceeding. I refer to these issues by the following titles:

- Issue 1. Salaries - General Increase for 2007.
- Issue 2. Salaries - General Increase for 2008.
- Issue 3. Salary Schedule - Starting Pay.
- Issue 4. Injury on Duty.
- Issue 5. Additional Compensation for Field Training Officer.
- Issue 6. Incentive Pay/Tuition Reimbursement.
- Issue 7. Grievance Procedure.

At the hearing, the parties informed me that they have settled Issue 3, agreeing that the starting pay of Police Officers -- \$4,186.57 per month, as established by the salary schedule in the current labor agreement -- will remain the same during 2007 and 2008. The parties also informed me that they have settled Issue 7, agreeing that the grievance procedure established by Article IV of the current labor agreement will continue without change for the duration of the new labor agreement.

ISSUE 1: SALARIES - GENERAL INCREASE FOR 2007
ISSUE 2: SALARIES - GENERAL INCREASE FOR 2008

Section 16.1 of the current labor agreement, which establishes the "base salaries" of Police Officers for 2006, is set out below:

16.1. Employees within the department will receive the following base salaries for 2006:

	<u>Base Salary Per Month</u>	
	<u>01/01/06</u>	<u>07/01/06</u>
Police Officer A	\$4,766.48	\$4,814.14
Police Officer B	4,564.72	
Police Officer C	4,372.16	
Police Officer D	4,186.57	

Thus, the 2006 salary schedule establishes a monthly base salary of \$4,186.57 for newly hired Police Officers at the step titled, "Police Officer D," and three step increments for "Police Officer C," "Police Officer B" and "Police Officer A." The text of the section does not expressly state that the three steps above the starting rate will provide Police Officers with annual increases, but the evidence shows that they do advance to each higher step after an additional year of service. Currently, five of the seven Police Officers are at the top step, earning \$4,814.14 per month, and two have been recently hired -- paid either at the starting rate or at the rate for the second step.

The Union's Position.

The Union proposes that, effective January 1, 2007, the salary rates at the top three steps, as established by Section 16.1 of the current labor agreement, be increased by 4%, but that, in accord with the parties' agreement to settle Issue 3, there be no increase in the salary rate for the starting step, "Police Officer D." As I interpret this proposal, the Union seeks a 4% increase in the salary rates paid after July 1, 2006.

The Union also proposes that, effective January 1, 2008, the salary rates at the top three steps, as paid at the end of 2007, be increased by an additional 4%, but that, in accord with the parties' agreement to settle Issue 3, there be no increase in the salary rate for the starting step, "Police Officer D."

The Employer's Position.

The Employer proposes that, effective January 1, 2007, the salary rates at the top three steps, as established by

Section 16.1 of the current labor agreement, be increased by 3%, but that, in accord with the parties' agreement to settle Issue 3, there be no increase in the salary rate for the starting step, "Police Officer D." As I interpret this proposal, the Employer offers a 3% increase in the salary rates paid after July 1, 2006.

The Employer also proposes that, effective January 1, 2008, the salary rates at the top three steps, as paid at the end of 2007, be increased by an additional 3%, but that, in accord with the parties' agreement to settle Issue 3, there be no increase in the salary rate for the starting step, "Police Officer D."

Decision and Award.

The Union makes the following arguments. First, it argues that the difference in cost between its proposal and that of the Employer is insignificant. The Union estimates that, assuming all seven Police Officers were at the top step, for 2007 the difference in cost would be about \$4,044. It estimates that for 2008 the difference in cost would be an additional \$4,044 as the 2007 increase is continued, plus \$4,327 for the 2008 increase -- a total difference in cost of about \$12,415 for the two contract years. The Union presented information about the Employer's strong financial condition, and it argues that the Employer can easily afford to pay the two increments of 4% that the Union proposes.

Second. The Union acknowledges that, as now constituted, the Police Officer's classification is a "male-dominated class,"

under the definitions used by the Minnesota Department of Employee Relations ("DOER") to administer the Minnesota Local Government Pay Equity Act (the "Pay Equity Act"), Minn. Stat., Section 441.991, et seq. The Union argues, however, that the latest certification from DOER shows the Employer to be in compliance with the Pay Equity Act and that an award of its salary proposal would not cause the Employer to be out of compliance with the Pay Equity Act.

The Union also argues that the history of wage and salary increases provided by the Employer to other employees shows that some classifications have received increases that exceed the predominant percentage increase received by other employees, thus demonstrating that the Employer has departed from pattern increases in the past.

Third. The Union argues that external comparison -- comparison of salaries paid to Police Officers by the Employer and to salaries paid to Police Officers by comparable cities -- justifies the salary increases it proposes. The Union argues that the cities used in such a comparison should not be restricted to the "Stanton Group VII" cities that the Employer would use for that comparison, as I describe below. The Union urges that use of the Stanton Group VII cities -- a group of metropolitan area suburbs with population less than 10,000 -- incorrectly assumes that similar size of population is the most relevant factor that should impact compensation levels. The Union proposes the use of three other groups of cities, which, according to the Union, are more relevant for comparison because of similarities in wealth, in geographic area, in crime rate and

in other factors relevant to compensation for Police Officers. The Union refers to these groups as 1) the "Union's Cities Group," 2) the "Cluster Cities Group," and 3) the "City's Group."

Below are set out the cities in the Union's Cities Group with the combined crime rate (part 1 and part 2 crimes) and the percentage of crimes cleared for 2006 from the Minnesota Crime Rate Report (I note that the last two listed are not incorporated cities, but are entities that provide law enforcement service to smaller nearby communities by agreement among those communities):

<u>City</u>	<u>Population</u>	<u>Combined Crime Rate</u>	<u>Percentage Cleared</u>
Minnetonka	50,390	5,054	53%
Minnetrista	7,591	4,953	62%
Mound	9,470	7,085	49%
Orono	11,894	5,546	32%
Plymouth	70,233	5,080	41%
Wayzata	4,001	11,291	60%
South Lake Minnetonka	12,201	6,286	58%
West Hennepin	5,569	5,710	70%

The Cluster Cities Group proposed by the Union consists of fifteen cities in the "Diversified Cities Cluster," as grouped by the League of Minnesota Cities (the "League"). The fifteen cities are Arden Hills, Coates, Forest Lake, Fridley, Gem Lake, Golden Valley, Lilydale, Long Lake, Maple Plain, Maplewood, Oak Park Heights, Osseo, Roseville, St. Louis Park and Wayzata. Four factors were used by the League to group these cities -- population in 2000, population growth between 1990 and 2000, median household income in 1999 and per capita commercial and industrial property market value in 2002. The evidence presented does not include information for these factors by

city, but, instead, provides the average for all fifteen cities in the cluster. Thus, for the fifteen cities, the average population in 2000 was 12,834, and the average per capita commercial and industrial property market value in 2002 was \$20,043.

The Union refers to the third group of cities it proposes for external comparison as the "City's Group." It consists of eight cities -- Champlin, Chaska, Crystal, Excelsior (South Lake Minnetonka), Northfield, Prior Lake, Orono and St. Anthony -- that, the Union argues, the Employer has used in the past for wage and salary comparisons.

The Union argues that the average salaries for Police Officers at the top step in the three comparison groups exceed the top step salaries paid to Police Officers by the Employer, thus justifying its position. Thus, for the Union's Cities Group, the average 2006 top step salary of \$4,859.72 increased in 2007 to \$5,021.51, or 3.3%. The Union's proposed 4% increase for 2007 would raise Police Officers' top step salary to \$5,006.71, and the Employer's proposed increase of 3% would raise it to \$4,958.56. Only two of the cities in the Union's Cities Group have settled for 2008. The 2008 top step salary increased by 3.01% in the City of Minnetonka and by 4.04% in South Lake Minnetonka.

For the Cluster Cities Group, salary information given does not include information from three of the cities -- Arden Hills, Coates and Lilydale. The remaining eleven cities (excluding Wayzata) in the group paid Police Officers at the top step an average monthly salary of \$4,858.78 in 2006, and that

average increased by 3.3% to \$5,019.19 in 2007. Only two cities had settled salaries for 2008. St. Louis Park and Golden Valley each increased the top step salary by 3.25%

For the third group proposed by the Union, the "City's Group," the average 2006 top step monthly salary for Police Officers of \$4,801.27, including Champlin, was increased to an average of \$5,013.34, excluding Champlin, which has not settled. The percentage increase of these two disparate averages is 4.42%. If Champlin is excluded from both averages, the percentage increase is 4.8%. That average rate of increase is substantially influenced by an increase of 11.5% at Northfield, as that City raised its 2006 top step salary from \$4,484.13 to \$4,999.97 in 2007. The average percentage increase for the settled cities other than Northfield is about 3.68%. The Union notes that the other cities in this group provide some form of "longevity pay" to increase the monthly compensation of long serving Police Officers, but that Wayzata Police Officers do not receive longevity pay. Only two cities in this group have settled for 2008 -- Prior Lake with an increase of 3.00% and South Lake Minnetonka with an increase of 4.04%.

Fourth. The Union also argues that the Midwest Class D Consumer Price Index is rising at an increasing annual rate. Thus, during October, 2007, the annual rate of increase was 4.3%, whereas the annual rate of increase during the previous nine months of the year ranged from 1.3% to 3.4%.

The Employer makes the following arguments. First, it argues that compensation of public employees should not be

increased beyond what is indicated by relevant economic factors -- that an employer's ability to pay cannot justify the overcompensation of employees. Though the Employer does not dispute that it has sufficient resources to pay what the Union seeks, it urges that the award should not be influenced by that sufficiency.

Second. The Employer argues that it has followed a pattern of 3% increases for most of its employees. It concedes that a few employees have received a greater percentage increase, but it argues that the market demand for those employees is greater than the market demand for most of its employees, including its Police Officers. The Employer also argues that the Pay Equity standards show Police Officers to be overpaid by about \$100 per month.

Third. The Employer argues that, for many years, the Stanton Group VII cities have been used to define the relevant external market -- not only by the Employer, but by the Union. The Employer argues that the only reason the Union now wishes to abandon the use of that group and substitute the other groups it suggests is that the Union must do so to find justification for the relatively high increases it seeks.

Below are set out the Stanton Group VII cities (except for New Prague and Minnetrista, which, according to the information presented by the Employer, have not settled for 2007 and 2008) -- a group of metropolitan area suburbs with population (as of 2005) below 10,000, with the top step monthly salary for Police Officers in 2006 and 2007:

<u>City</u>	<u>Popula- tion</u>	<u>2006 Top</u>	<u>2007 Top</u>	<u>Percent Increase</u>
Mound	9,630	\$4,692	\$4,833	3.00%
St. Anthony	8,012	4,812	4,980	3.50%
Orono	7,687	4,703	4,891	4.00%
Spring Lk. Park	6,833	4,912	5,060	3.00%
Corcoran	5,850	4,880	5,027	3.00%
St. Francis	6,177	4,584	4,697	2.50%
W. Hennepin	5,324	4,769	4,912	3.00%
St. Paul Park	5,052	4,765	4,920	3.25%
Rogers	5,580	4,524	4,658	3.00%
Dayton	4,911	4,669	4,811	3.05%
Deephaven	3,885	4,800	4,944	3.00%
Oak Pk. Hts.	4,379	4,940	5,088	3.00%
Jordan	4,413	4,338	4,598	6.00%
Medina	4,276	4,822	5,015	4.00%
Newport	3,694	4,763	4,883	2.50%
Bayport	3,131	4,667	4,807	3.00%
AVERAGE			4,883	3.30%
Wayzata	4,122	4,814		

For 2008, eight of these cities have settled. Seven settled with a 3% increase and one with a 4% increase -- an average of 3.13%.

For the following reasons, I award an increase of 3.3% for 2007. I am influenced primarily by the external comparisons suggested by the parties. Those comparisons do not show that the salaries paid by the Employer are inordinately high or inordinately low when compared to the cities in the parties' several comparison groups. Accordingly, a percentage increase that approximates the predominant rate of increase in the comparison cities is indicated. The information from the Union's Cities Group, the Cluster Cities Group and the Stanton Group VII cities shows that in each of these three groups of cities the average percentage increase was about 3.3%.

I accept the Employer's argument that its ability to pay should not influence the award. Salaries should be established

from factors relevant to fair compensation, and the financial health of an employer should not justify payment of salaries higher than those factors indicate. I accept the Union's argument that the Employer's status under the Pay Equity Act should not influence the award. The award will have no substantial effect on the Employer's financial condition or on its compliance with the requirements of the Pay Equity Act.

For 2008, I award a an increase of an additional 3.4% -- a slightly higher percentage than for 2007 because of the recently increasing rate of inflation. There is not enough information about 2008 settlements in other cities to allow significant external comparison.

ISSUE 4: INJURY ON DUTY

Article IX of the current labor agreement provides:

Employees are covered by Workers' Compensation, which covers injuries received on the job. The employee will be paid by the City the difference between Workers' Compensation and the employee's regular pay up to one year per injury. The employee shall not lose sick leave for this type of injury. While on Workers' Compensation an employee shall continue to earn and accrue all benefits as fully employed and on duty. Employee agrees to submit to a medical examination by any qualified physician selected by the Employer to verify employee's inability and/or continued inability to work. The Employer agrees to pay the cost of such examination.

The Employer's Position.

The Employer proposes to amend Article IX to provide that bargaining unit employees hired after the date of this award receive the benefits established by this article for ninety days rather than one year, but those hired before the date of this

award would continue to receive the benefit described in the current labor agreement.

The Union's Position.

The Union proposes that the new labor agreement make no change in the current version of Article IX.

Decision and Award.

The Employer argues that it is the standard in the twin cities metropolitan area to provide Police Officers with an injury-on-duty benefit for ninety days. It proposes this reduction in the duration of that benefit for new employees only, thus preserving the existing benefit for those now in the bargaining unit.

The Union argues that Police Officers are especially at risk of being injured while on duty. The benefit provided by Article IX makes up the difference, after a duty-related injury, between Workers' Compensation, which pays about two-thirds of an Officer's salary, and his or her full salary. Before 1984, the parties' labor agreement required payment of this benefit indefinitely, but in 1984, the Union agreed in negotiation to reduce the duration of the injury-on-duty benefit to one year. The Union urges that, in the absence of a compelling need for change, this kind of benefit should not be changed in arbitration, but, instead, should be left to the parties' bargaining.

I do not award the change sought by the Employer. The parties bargained for the language of Article IX in 1984, and,

in the absence of an obvious and substantial unfairness in the current language of the provision, if it is to be changed, the change should occur in the give and take of bargaining.

ISSUE 5: ADDITIONAL COMPENSATION
FOR FIELD TRAINING OFFICER

The Union's Position.

The Union proposes that the following new provision be added to the labor agreement:

Section 16.4. An Officer assigned the duties of field training and evaluation of new Officers will receive one and one-half hours vacation time for each shift worked in this capacity.

The Employer's Position.

The Employer opposes the addition of this new provision to the labor agreement.

Decision and Award.

The Union makes the following arguments in support of its proposal to require extra compensation to those Police Officers who give training to new Officers. Some, but not all, of the bargaining unit Police Officers are assigned the extra responsibility of training new Officers. Typically, in law enforcement, an Officer performing such duties is referred to as a "Field Training Officer." To be eligible to give such training, an Officer must take courses in training methods.

Many cities provide extra compensation to a Police Officer assigned to train new Officers -- in the form of compensatory time or in a dollar differential for the hours spent giving such training. Five cities in the Union's City

Group and eight of the Stanton Group VII cities provide such compensatory time or a cash differential.

The Employer argues that the Union's proposal is not arbitrable. It argues that, in effect, what the Union asks is the creation of a new classification by arbitration -- a power clearly reserved to management by PELRA. The Employer also argues that the Union's proposal is not supported by external comparisons in most of the Stanton Group VII cities.

In addition, the Employer argues that the work at issue -- the training of a new Officer -- is not extra work performed in overtime; rather, it is no different from any other kind of work that a Police Officer performs in his regular duty day. The Employer urges that this proposal is the unjustified equivalent of asking for a differential for any of the tasks that a Police Officer might be called upon to perform during the day, such as making an arrest or filling out a report.

Though I agree with the Union that providing a differential for a particular duty assigned to an existing class would not, in effect, create a new class, I do not award the change sought by the Union. I regard this change as one that should occur through bargaining and not by arbitration. Similar to the Employer's proposed change in the injury-on-duty benefit discussed above, it should come into the labor agreement in the give and take of bargaining.

ISSUE 6: INCENTIVE PAY/TUITION REIMBURSEMENT

Article XVII of the current labor agreement provides that "all full-time police employees" are entitled to educational

incentive pay, as described in the seven sections of the article. Its Section 17.5 is set out below:

An employee will not be paid for time used to attend classes and participate in the educational incentive pay program. Employee agrees, if possible, to arrange for the cost of books and tuition at no cost to the City. If an employee cannot arrange for assistance in meeting expenses for tuition and books, the Employer agrees to reimburse the employee for one-half the cost of books and tuition for approved courses.

The Union's Position.

The Union proposes that the new labor agreement continue the educational incentive program as described in Article XVII of the current labor agreement, except for the obligation of the employee, as described in Section 17.5, to attempt to have the cost of books and tuition paid by someone other than the Employer. Thus, the Union proposes that the text of Section 17.5 be changed in the new labor agreement to the following:

An employee will not be paid for time used to attend classes and participate in the educational incentive pay program. The City agrees to reimburse the employee for one-half of the cost of books and tuition for approved (by the Chief of Police) courses.

The Employer's Position.

The Employer opposes the change sought by the Union.

Decision and Award.

The Union notes that the present language of Section 17.5 came into the labor agreement in 1984. The provision at issue requires an employee participating in the educational incentive pay program, "if possible, to arrange for the cost of books and tuition at no cost to the City" (my emphasis), but it also

states that, if the employee cannot arrange such payment, "the Employer agrees to reimburse the employee for one-half the cost of books and tuition for approved courses."

The Union points out that this provision came into the agreement when federal loans and grants covering these costs were more easily available than they are now. The Union seeks this change because it fears that the current language might be interpreted by the Employer as justification for denying the Employer's obligation to reimburse half the cost of tuition and books if the employee is unable to obtain such a loan or grant.

The Employer argues that there is no support for the Union's proposal in any arbitration decision or from external comparison to other cities.

I do not award the change sought by the Union. The evidence does not show that the Employer has acted as the Union fears it might, i.e., that it has denied its obligation to pay half the cost of tuition and books on the ground that a participating employee has not been able to obtain reimbursement for such costs elsewhere. In the absence of a basis in fact for the Union's fear, the change is unnecessary.

December 31, 2007


Thomas P. Gallagher, Arbitrator