IN THE MATTER OF INTEREST ARBITRATION BETWEEN

METROPOLITAN COUNCIL	)	**BMS Case No. 11-PN-0174**
	)	**Hearing Date: 05-03-11**
and	)	**Brief Filing Date: 05-20-11**
	)	**Award Date: 06-21-11**
LAW ENFORCEMENT LABOR SERVICES, INC, LOCAL NO. 203	)	**Arbitrator: Mario F. Bognanno**

I. JURISDICTION AND BACKGROUND

The parties in this case are Metropolitan Council ("Council" or "Employer") and Law Enforcement Labor Services, Inc. ("LELS" or "Union"), each of whom are signatories to a January 1, 2008 – December 31, 2009 Collective Bargaining Agreement ("CBA"). (Employer Exhibit 1 & Union Tab 3) The parties failed to negotiate a successor CBA and pursuant to Minn. Stat. §179A.16 this matter was heard on May 3, 2011 in St. Paul, MN.[1] The parties were given a full and fair opportunity to present the respective cases; witness testimony was sworn and cross-examined; documentary evidence was accepted into the record. On or about May 20, 2011, the parties submitted timely post-hearing briefs and thereafter the matter was taken under advisement. At the hearing, the parties stipulated that the term of the successor CBA was two (2) years, implying that Section 19.01 – Term of Agreement – shall read as follows:

> The terms (sic) of this Agreement shall take effect on January 1, ~~2008~~ 2010 and shall remain in effect through December 31, ~~2009~~ 2011 and

[1] The record was reopened telephonically on June 14, 2011 for the limited purpose of clarifying the content of Employer Exhibits 29 and 30. In addition to the undersigned, the teleconference participants included Ms. Sandi Blaeser, and Messrs. Frank Madden and Nick Wetschka. During the teleconference, the Council substituted revised editions of Employer Exhibits 29 and Employer 30 and on June 15, 2011, the Council emailed numerical calculations pertaining to these exhibits.

> shall continue from year to year thereafter from January 1st through December 31st of each year unless changed or terminated in the manner provided by this action.

(Employer Exhibit 1 & Union Tab 3; ~~strikethrough~~ language deleted, underlined language added)

The Council is a regional planning agency that services Minnesota's Twin City seven (7) county metropolitan area, plus Sherburne County and 85 cities in the region. The primary services provided are bus and light rail services and waste water collection and treatment services The Employer is governed by a 17-person Metropolitan Council, with each councilperson appointed by the Governor. The Metropolitan Council establishes its own operating and capital budgets, work programs and capital improvement program; however, its work is overseen by the State Legislative Commission on Metropolitan Government. (Employer Exhibits 7 and 9)

The Employer is organized into five (5) divisions one of which is the Transportation Division, which includes Metro Transit and Metropolitan Transportation Services. (Employer Exhibit 8) Within Metro Transit is the Metro Transit Police Department: a "'special purpose' police department, focusing on matters integral to the operation of Metro Transit operations, not the general community at large." (Employer Exhibit 10) The Metro Transit Police Department is staffed with licensed police officers who provide public safety on and near the transit system, including bus routes, the Hiawatha and Northstar light rail lines and the developing Central Corridor light rail system. Approximately 69 full-time officers, 55 part-time officers, four (4) community service officers and five (5) administrative staffers are employed by the Metro Transit Police Department. (Employer Exhibits 10 through 11(B) & Union Tab 1)

Historically, the instant bargaining unit was comprised of so-called “Transit Police Supervisors” whose responsibilities were akin to those of officers in the first-line supervisory rank of Sergeant. However, as Metro Transit has evolved and expanded so too have the roles and responsibilities of its Police Department. Specifically, it became apparent that the Transit Police Supervisor job classification needed to be bifurcated because supervisory functions were becoming increasingly specialized. First, the Police Department needed supervisors responsible for overseeing the work of Metro Transit’s police officers, responding to service calls, conducting initial investigations of criminal activities, enforcing applicable laws, and completing reports to mention a few of said responsibilities—Sergeants. (Employer Exhibits 35 & 36) Second, it needed supervisors responsible for overseeing the work of newly created Sergeant classification, monitoring roll calls, assisting in planning, coordinating and deploying police officers in response to crime trends, for example, as well as to manage the training unit, crash reconstruction team, counter-terrorism team, and other special Police Department teams and programs—Lieutenants. (Employer Exhibits 39 & 42)

In view of these needs the Metro Transit Police Department generated a Five Year Plan that included the new Sergeant and Lieutenant classifications. According to plan, effective October 1, 2010, the new Sergeant classification was established and internal promotions from among full-time Police Officers filled ten

(10) Sergeant positions. On this same date, the eight (8) employees who held the now defunct Transfer Police Supervisor job classification were transferred to the new Lieutenant classification. On payroll as of April 2011 there were ten (10) Sergeants and seven (7) Lieutenants. (Employer Exhibit 28 & Union Tab 2) According to the Five Year Plan, the ranks of Lieutenant would be reduced through attrition, while the ranks of Sergeant would swell to 14. (Employer Exhibit Book, V-2 & V-3)

As previously observed, the parties were unable to negotiate a successor to their expired January 1, 2008 – December 31, 2009 CBA. Subsequently, as provided in Minn.Stat.§179A.16,Subd.2, the commissioner of the Bureau of Mediation Services, State of Minnesota, certified the following issues for binding interest arbitration:

1. Wages 2010 – Amount of Adjustment, if Any, for Sergeant Position & Lieutenant Position. Effective Date 2010 – Art. 10.1, Appendix
2. Wages 2011 – Amount of Adjustment, if Any, for Sergeant Position and Lieutenant Position. Effective Date 2011 – Art. 10.1, Appendix
3. Differential – Amount of Differential – Art. 10.3
4. ~~Overtime – Which Classification is Eligible For OT – Art. 10.5.~~

(Employer Exhibit 2 & Union Tab 4 – The Union withdrew Issue 4, Overtime, at the hearing; ~~strikethrough~~ language deleted.)

II. APPEARANCES

Metropolitan Council

Frank J. Madden	Attorney-at-Law
Ed Petre	Director of Finance, Metro Transit
Sandl Blaeser	Asst. Director, HR & Labor Relations
Marcia Keown	Labor Relations Specialist
Marcy Syman	Asst .HR Director, Metro Transit
Mark Goldberg	Compensation Analyst

<u>Law Enforcement Labor Services, Inc., Local No. 203</u>

Nicholas Wetschka	Attorney-at-Law & BA
Charlie Dodge	Union Steward
Troy Schmitz	Union Steward

III. <u>FINAL POSITIONS OF THE PARTIES</u>

A. <u>Issues 1 and 2</u>—Wages 2010 & Wages 2011—Amount of Adjustment, if Any, for Sergeant Position & Lieutenant Position. Effective Date *2010 & 2011 – Art. 1*0.1, Appendix A

Article 10.1, Appendix A, in the 2008 – 2009 CBA identifies Transit Police Supervisor annual salaries, effective July 1, 2009. Table 1 below replicates said salary schedule. (Employer Exhibit 1 & Union Tab 3)

Table 1 Expired CBA's Salary Schedule for Transit Police Supervisors

Effective July 1, 2009	Starting Rate	After 1 Year	After 2 Years	After 3 Years	After 4 Years	After 5 Years
Transit Police Supervisor	$68,794	$71,388	$73,888	$76,473	$79,151	$81,921

While the parties disagree on the timing and amount of 2010 and 2011 annual salaries that the new Lieutenant and Sergeant classifications ought to be paid, they agree on two (2) points:

1. After October 1, 2010, the Transit Police Supervisor classification in Table 1 shall be replaced by the new Lieutenant and Sergeant classifications.
2. Effective October 1, 2010, a two (2) step salary schedule for Sergeant's—Starting Rate and After 6 Months Rate—shall replace the six (6) step salary schedule in Table 1.

The Union proposes that the two (2) step salary schedule reference in (2) above shall also apply to the Lieutenant classification effective October 1, 2010;

whereas, the Employer proposes that the effective date of the Lieutenant two-step salary schedule shall be delayed until December 31, 2010.

Employer's Final Position on Wages 2010 & 2011

The Employer's final 2010 and 2011 wage position is summarized in Table 2. Special note is made of the following bullet points:

Table 2 Metropolitan Council's Final Position on Wages 2010 & 2011

Effective January 1, 2010	0.00% general wage increase					
Effective January 1, 2011	0.00% general wage increase					
Effective October 1, 2010, the Lieutenant and Sergeant salary schedules shall be as below:						
Lieutenant	Starting Rate	After 1 Year	After 2 Years	After 3 Years	After 4 Years	After 5 Years
	$68,794	$71,388	$73,888	$76,473	$79,151	$81,921
Sergeant	Starting Rate			After 6 Months Rate		
	$70,224.76			$73,736.00		
Effective December 31, 2011, the Lieutenant salary schedule shall be as below:						
Lieutenant	Starting Rate			After 6 Months Rate		
	$77,835			$81,921		

(Employer Exhibits 3 and 27 & Union Tab 6)

- There shall be 0.00 percent general salary increases effective January 1, 2010 and effective January 1, 2011.
- Between January 1, 2010 and October 1, 2010 the salaries of all bargaining unit personnel shall be as depicted in Table 1.
- Effective October 1, 2010, the salary for the ten (10) new Sergeants shall be $70,224.76—the six (6) month probationary Start Rate step—and thereafter the salary shall be $73,736—the post-probationary After 6 Months step.

- Effective October 1, 2010, the salaries of the former Transit Police Supervisors now reclassified as Lieutenants shall remain as depicted in Table 1.
- Effective December 31, 2011, the new Lieutenant classification's six (6) month probationary Starting Rate shall be $77,824.95 and the non-probationary After 6 Months Rate shall be $81,921.00.

(Employer Exhibits 3 and 27 & Union Tab 6)

The Employer also proposes to change the language in Section 10.01 as shown below:

> Job classifications shall be assigned to a pay progression schedule based upon the job classification's duties, responsibilities, difficulty, and minimum hiring requirements. Pay progression schedules for the job classifications covered by this Agreement are set forth in Appendix "A" of this Agreement.
>
> <u>Effective 12/31/2011, job classifications shall be assigned to a pay rate based upon the job classification duties, responsibilities, difficulty, and minimum hiring requirements. Pay rates for the job classifications covered by this Agreement are set forth in Appendix "A" of this Agreement.</u>

(Employer Exhibit 3 & Union Exhibit 6; <u>underlined</u> language added)

<u>Union's Final Position on Wages 2010 & 2011</u>

The Union's final 2010 and 2011 wage position is summarized in Table 3. Special note is made of the following bullet points:

- There shall be 0.00 percent general salary increases effective January 1, 2010 and effective January 1, 2011.

- Between January 1, 2010 and October 1, 2010 the salaries of all bargaining unit personnel shall be as depicted in Table 1.

Table 3 Union's Final Position on Wages 2010 & 2011

Effective January 1, 2010 0.00% general wage increase Effective January 1, 2011 0.00% general wage increase		
Effective October 1, 2010, the Lieutenant and Sergeant salary schedules shall be as below:		
	Starting Rate	After 6 Months Rate
Lieutenant	$89,731	$94,203
Sergeant	$77,833	$81,931

(Employer Exhibit 4 & Union Tab 5)

- Effective October 1, 2010, the new Lieutenant classification's six (6) month probationary Starting Rate shall be $89,731 and the non-probationary After 6 Months Rate shall be $94,203. Effective October 1, 2010, the new Sergeant classification's six (6) month probationary Starting Rate shall be $77,833 and the non-probationary After 6 Months Rate shall be $81,931.

B. <u>Issue 3</u>—Differential—Amount of Differential – Art. 10.03

<u>Employer's Final Position on the Amount of the Differential</u>

The Employer proposes that the language in Section 10.03 shall be as follows:

> The salary of an employee who is promoted to a position which provides for a higher maximum salary than the employee's current position shall be the next increment higher than the salary last received by such employee in the lower classification; provided, however, that if the next increment is not at least eight percent (8%) higher than the salary last received, the employee shall be advanced an additional increment. If one so exists and thereafter shall increase in accordance with Section 10.03 (*Pay Progressions*) of this article.

Effective 12/31/11, this Section becomes obsolete. The salary of an employee who is promoted shall be the rate of pay defined in Appendix A.

(Employer Exhibit 3 & Union Tab 6; underlined language added.)

Union's Final Position on the Amount of the Differential

The Union proposes that the language in Section 10.03 shall be as follows:

> The salary of an employee who is promoted to a position which provides for a higher maximum salary than the employee's current position shall be the next increment higher than the salary last received by such employee in the lower classification; provided, however, that if the next increment is not at least ~~eight percent (8%)~~ nine percent (09%) higher than the salary last received, the employee shall be advanced an additional increment. If one so exists and thereafter shall increase in accordance with Section 10.03 (*Pay Progressions*) of this article.

(Employer Exhibit 4 & Union Tab 5; ~~strikethrough~~ language deleted, underlined language added)[2]

IV. EMPLOYER'S ARGUMENT—ISSUES 1 AND 2—WAGES 2010 & WAGES 2011

The Employer begins by pointing out that 86 percent of the Metropolitan Council's revenues are from fees, and State of Minnesota and federal allocations. The remaining 14 percent are from a seven-county Minneapolis-St. Paul metro area property tax and from "other sources." (Employer Exhibit 7) These revenue sources, the Employer argues, have been adversely affected by the "Great Recession" of 2008 and the economy's subsequent, but sluggish and jobless, recovery that continues to date. (Employer Exhibits 12 and 13) Indeed, the overall economy's comeback has been so slow that between 2008 and 2010

[2] The Union's final position, as certified by the Commissioner of the Bureau of Mediation Services, was to modify Section 10.3 by striking "eight percent (8%)" and adding "ten percent (10%) At the hearing, the Union amended its final position by substituting "nine percent (9%)" for "ten percent (10)."

there was scarcely any aggregate price inflation as demonstrated by the fact that Social Security and Supplemental Security Income benefits were not increased in either 2010 or 2011. (Employer Exhibits 14, 15, 19 and 22)

More specifically, the Employer observes that since the onset of the 2007-IV recession, the State has faced a series of budgetary short-falls (i.e., expenditures exceeding revenues). These forecasted short-falls have been managed largely through expenditure-savings and one-time "fixes" in the face of anemic revenue growth. Presently, the State's FY 2012 and FY 2013 budget outlook, which commences/concludes on July 1, 2011/June 30, 2013, is troublesome. This biennium's projected budget deficit is $5.028 billion. (Employer Exhibits 16 ~ 20) To date, the Minnesota Legislature and the Governor have not agreed on the combination of expenditure-savings and revenue enhancement measures that will be needed to balance the upcoming biennium's budget. The Employer observes that there is every indication that the Metropolitan Council will participate in any expenditure-savings that are enacted. These, the Employer argues, are "fiscally conservative times in the State of Minnesota."

On behalf of the Employer, Mr. Ed Petrie, Director of Finance, testified to the following:

1. The financial resources of the Metropolitan Council's various divisions are restricted and, generally, inter-divisional transfers of funds are impermissible. That is, the year-end deficits and surpluses of each division are that division's responsibility. (Employer Exhibit 24)

2. During calendar year 2010, the Transportation Division's operating budget was $391 million, with budgeted expenses exceeding budgeted revenues by $24.3 million. This represented a revenue shortfall of 6.6 percent. (Employer Exhibit 23, p. 3) This shortfall was "fixed," using one-time Federal "stimulus" funds ($17.7 million) plus one-time transfers from the General Fund levy ($3.2 million) and from Livable Community reserves ($3.4 million). (Employer Exhibit 23, p. 4)
3. During calendar year 2011, the Transportation Division's operating budget is $379.5 million—a year-over-year reduction of nearly 3 percent—with budgeted expenses exceeding budgeted revenues by $13.3 million. This shortfall represents 3.6 percent of revenues. (Employer Exhibit 23, p. 6) Again, one-time monies are being used to plug this shortfall in revenues. Specifically, Light Rail revenues ($0.6 million) and Motor Vehicle Sales Taxes for State FY 2010 and State FY 2011 have been allocated to the Division on a one-time basis in the amount of $6 million and $6.7 million, respectively. (Employer Exhibit 23, pp. 6 & 7))
4. The Metropolitan Council recommends that its divisions maintain minimum undesignated fund balances of 8.3 percent of annual operating expenses. The Transportation Division's 2011 "operating expenses" are $252.1 million ($269.1 million less $17 million in capitalized maintenance deficits). Thus, an undesignated fund balance of $20.92 million is recommended. The Transportation Division's actual

2011 undesignated fund balance is $21.7 million, suggesting the absence of available fund balances that could be used to cover unplanned labor cost increases. (Employer Exhibit 23, pp. 5 & 9)

5. The State FY 2012/2013 biennium deficit is estimated to be $5.028 billion and a FY 2014/2015 biennium deficit of $4.40 billion is projected. (Employer Exhibit 23, p. 10) While FY 2012/2013 biennium begins on July 1, 2011, the Minnesota Legislature and the Governor have been unable to agree on a budget that will resolve the $5.028 billion deficit problem. Mr. Petre observed that this problem's resolution will most likely result in a reduction of State appropriations to the Transportation Division. He noted that the Minnesota House's biennium budget proposal calls for a $130 million reduction in appropriations, while the Minnesota Senate's proposal calls for a reduction in the Transportation Division's appropriation in the amount of $30 million. Mr. Petre opined that "after dust clears" the Division's appropriations will most likely be reduced by $40 million to $50 million. Thus, for example, he pointed out that a loss of $40 million in State FY 2012/2013 appropriations in addition to Transportation Division's existing State FY 2012/2013 structural deficit of $17.8 million would result in an estimated biennial shortfall of $57.8 million. The Employer, he commented, does not and will not have undesignated fund balances in reserve to cover this "best case" scenario. The future, Mr. Petre testified, is at even greater "risk" because the Transportation

Division's State FY 2014/2015 structural biennial deficit and the State's FY 2014/2015 biennial appropriations to the Transportation Division are forecast to continue to be in the "red." (Employer Exhibit 23, p. 13)

Based on the foregoing, the Employer maintains that the Transportation Division's operating budget is seriously compromised. Citing precedent on point, the Employer argues that in the face of stormy economic conditions, interest arbitrators are reluctant to order new spending on wages and fringe benefits.

Next, the Employer observed that the new Sergeant and Lieutenant classifications were the subjects of Hay Method job evaluations. Using each position's "Position Description Questionnaire," a trained, multi-member committee "scored" each classification using a uniform set of job factors, including each job's unique skill, knowledge and ability factors, among other factors. (Employer Exhibits 33A, 35 & 39) The respective job evaluations determined that the Sergeant and Lieutenant receive 336 and 406 "Hay Points." (Employer Exhibit 36 & 40) With respect to Metro Transit Police Department, the Council's internal compensation structure establishes the following hierarchical relationship among Job Classifications, Hay Points, Pay Grade and 2010 Pay Ranges, actual and proposed. (Employer Exhibits 34 & 43)

Job Classification	Hay Points	Pay Grade	2010 Salary Range
Officer, FT (Union)	276	7	$45,386 - $70,450 (Incl. Longevity)
Sergeant (new, Union)	336	8	$70,224 - $73,736 (Council's Position) $77,834 - $81,931) (LELS' Position)
Lieutenant (new, Union)	406	9	$68,794 – 81,921 (Council's Position)

			$89,731 – 94,203 (LELS' Position)
Captain (non-Union)	588	11	$58,517 – $$87,447 [$83,144 Actual Pay]
Deputy Chief (non-Union)	830	13	$66,288 – $105,696 [$85,877 Actual Pay]
Chief (non-Union)	860	14	$70,221 – $111,967 [$105,331 Actual Pay]

Based on this informational array, the Employer makes particular note of the following:

1. The Metro Transit Police Department's Deputy Chief and Patrol Captain have salaries of $85,877 and $83,144, respectively; and the maximum salary of a full-time Police Officer is $70,450.
2. The Council's proposes an "After 6 Months" salary of $81,921 and $73,736 for Lieutenants and Sergeants, respectively: a differential of approximate 10 percent, which is a common separation among law enforcement agencies. In contrast, the Union's proposed differential is approximately 15 percent.
3. The Union's proposed an "After 6 Months" Lieutenant's salary of $94,203 which is higher than the actual salary paid to the Captain ($83,144) and Deputy Chief ($85,877) classifications.

Ultimately, the Employer argues that to order the Union's wage proposal will compress and probably invert the Metro Transit Police Department's salary structure. Citing precedent, the Employer asserts that since the early 1990s most interest arbitrators have given "greater weight" to an employer's pattern of "internal negotiated settlements" with other bargaining units as opposed to "externally negotiated settlements." Hard economic times, the strict enforcement of the Pay Equity Act, and candid recognition of the fact that deviation from the internal pattern can destabilize labor relations, ‘’whipsawing,” and dispirit hard bargaining have elevated the relative standing of the internal comparison criterion from among the decisional criteria used by interest arbitrators.

Next, the Employer maintains that its wage position is consistent with the 2010-2011bargaining parameters established by the Metropolitan Council. The Metropolitan Council’s parameters are that negotiated settlement shall not increase the cost wage and fringe benefit outlays by more than 2 percent per year and that step increases are to be excluded for the costing model. These parameters, the Employer asserts, are being met in the current round of negotiations. Negotiated settlements have been reached with the ATU, Local 1005 (representing 2,242 employees); AFSCME, Council 5 (474 employees); IUOE, Local 35 (207 employee); MANA, (86 employees); IAM, Local 77 (50 employees); IBT, Local 320 (45 FT Police Officers). The “2-percent” parameter was also applied to the Employer’s 283 non-represented employees. (Employer Exhibit 50) To date, the Employer notes that the salaries of 3,387 employees, representing nearly 92 percent of the Council’s personnel, have been settled and all bargaining unit settlements have been within the “2-percent” parameter. (Employer Exhibit 49) In contrast, the Employer contends, the LELS is demanding 2010 and 2011 wage and benefit increases of 10.35 percent and 5.22 percent, respectively. (Employer Exhibit 30 & Employer Exhibit 50) To issue an award that ignores this internal pattern of settlements with the Council’s largest bargaining units would not only upset the hierarchical structure of pay within the Metro Transit Police Department, but it would surely compromise the stability of labor relations within the Council, inviting "whipsawing."

Finally, the Employer offers little in the way of market or external comparison data. (Employer Exhibit 52) Instead, it urges that the Stanton Group V is not an appropriate comparison group: funding sources are uniquely different and, in particular, unlike cities, the Council receives about one-third (1/3rd) of its revenues from the State and only about 10 percent of revenues from property taxes. Further, there is no problem currently with either attracting qualified candidates for the new Lieutenant and Sergeant positions or any issue with incumbents leaving for higher paying positions elsewhere. In the last three years, only three employees in this LELS unit have separated and all of the separations were due to retirements. (Employer Exhibit 47)

V. UNIONS'S ARGUMENTS—ISSUES 1 AND 2—WAGES 2010 & WAGES 2011

The Union begins by observing that the Sergeant and Lieutenant salaries in question are for newly created job classifications whose salary schedules are being established for the first time. Yet, the Union argues, the Employer's wage proposals fail to recognize how the labor market (i.e., the Stanton Group V comparison set) values either position. Further, even though the effective date of these new titles was October 1, 2010, the Employer's wage proposal for the Lieutenant position does not take effect until December 31, 2011. Still further, the Union takes issue with the Employer's application of the Hay Method for determining the comparable worth of the new classifications, pointing out that the Employer's wage position is "grossly below the market."

More specifically, the Union observes that while both parties are proposing 0.00 percent salary adjustments effective January 1, 2010, external market data, its two-step wage proposal effective October 1, 2010—when the new classifications became effective—is as follows:

	Starting Rate	After 6 Month Rate
Lieutenant	$89,731	$94,203
Sergeant	$77,883	$81,931

In contrast, even though the new Lieutenant title/responsibilities took effect on October 1, 2010, the Employer proposes that occupants of this position ought to be compensated based on the expired CBA's July 1, 2009 "Transit Police Supervisor" salary schedule, which appears above in Table 1. Moreover, the Employer proposes that effective December 31, 2011, the Lieutenant position ought to be compensated according to the following two-step salary schedule:

	Starting Rate	After 6 Month Rate
Lieutenant	$77,824.95	$81,921.00

Regarding the new Sergeant title/responsibilities, the Union notes that the Employer proposes the following two-step salary, effective October 1, 2010:

	Starting Rate	After 6 Month Rate
Sergeant	$70,224.76	$73,736.00

In addition to questioning the Employer's wage proposal for both positions, the Union argues that no reason was given for delaying the implementation of the two-step salary schedule for the Lieutenant's from October 1, 2010 to December 31, 2011.

Pointing to arbitral precedent, the Union argues that external or market comparisons ought to determine this matter and that the Stanton Group V set of Twin Cities Metropolitan Area cities has long been recognized by arbitrators as the appropriate comparison group. (Metropolitan Council and LELS, BMS Case No. 03-PN-1155 (Miller, 2003)) Union's analysis was based on the Stanton Group V set of 25 cities plus the Airport Commission Police Department and the University of Minnesota Police Department. Twenty-six (26) of the 27 police departments in the Union's comparison group reported 2010 top salaries for the Sergeant position. For 2010, the Sergeant's average top salary was $83,551, which is 1.97 percent higher than the Union's October 1, 2010 top wage proposal ($81,931), and 13.31 percent higher than the Employer's top October 1, 2010 wage proposal ($73,736). (Union Tab 11)

Among the referenced 27 police departments, 17 reported having a Lieutenant position and all but 1 of these departments reported the top 2010 salary for the Lieutenant class. For 2010, the Lieutenant's average top salary is $96,013, which is 1.92 percent higher than the Union's October 1, 2010 top wage proposal ($94,203) and 17.18 percent higher than the Employer's proposal ($81,921). (Union Tab 12[3]) Ultimately, the Union argues, that to award the

[3] Neither Union Tabs 11 nor 12 indicate whether the reported top wages for 2010 and 2011, respectively, are the result of negotiated settlements or interest arbitrations.

Employer's final wage position for these new classifications will leave them trapped at the very bottom of their market. Whereas, to award the Union's final wage position will establish wages for the new Lieutenant and Sergeant classes that would be (1) slightly below the mean of the relevant external comparison cohort and (2) compliant with the Pay Equity Act, since the Employer did not present evidence to the contrary. (Union Tab 10)

Further, the Union urges that the Employer's internal comparison (i.e.., pattern of 2010-2011 internal wage settlements) ought not control in this case because the Employer's 2010-201 Lieutenant and Sergeant wage proposals so radically undervalue these new classifications *vis a vis* the market. Indeed, relative to the performance of the general economy, the Union notes that, although sluggish, recovery is afoot. Thus, not surprisingly, there is every indication that living costs are beginning their assent. Indeed, the CPI-U increased at an annul rate of 2.4 percent during 2010 and the early signs are that the CPI-U will increase at a faster pace during 2011—evidence in support of its final wage positions. (Union Tabs 14, 15 and 16)

Next, the Union turned its attention to the Council's financial health. In 2009, the Council's assets exceeded its liabilities by $1.8 billion, with $216 million of this amount designated as unrestricted net assets. Further, the Council's unrestricted net assets position and its general fund balance ($20 million) improved relative to 2008. (Union Tab 8, p. 57) The 2009 data, the Union contends, are more reliable than the 2010 estimated and 2011 projected or forecasted data on which the Employer's analysis relies. Assuming 10

Lieutenants and 10 Sergeants on payroll during 2010 and 2011, the Union estimates that its 2010-2011 top wage proposal will cost $255,840 more than its estimated cost of the Employer's top wage proposal: a differential that represents only 1.28 percent of the Council's $20 million general fund balance—unquestionably, the Union concludes, the Employer has the ability to fund its final 2010-2011 wage proposal. (Union Tab 7, pp. 39 ~ 41 and Union Brief, p. 12) Under the more realistic assumption that in 2010 and 2011 the Employer had 8 and 7 Lieutenants on payroll, respectively, as well as 10 Sergeants during both of years, the Union's data suggests that its 2010-2011 top wage proposal will cost only $167,856 more that the Employer's proposal: an even smaller fraction of the general fund balance.[4] (Union Tab 7, pp. 43 ~ 45)

Finally, the Union argues that the attention the Employer gave to State FY 2012/2013 and State FY 2014/2015 problems represent little more than a "straw-man." For years the Employer has "cried wolf," pledging layoffs in the face of budgetary shortfall. Yet, the Union notes, there have been no layoffs since 2002. Moreover, State FY 2012/2013 and FY 2014/2015 have nothing to do with calendar year wages in 2010 and 2011 and, who knows, as they always do, the Council will "magically" find a way to cover the budgetary shortfalls anticipated over the biennium.

[4] The Union contends that the Employer has actually budgeted for 10 Lieutenants, even though only 8 and 7 were actually employed in 2010 and 2011, respectively. Thus, within the Employer's current Metro Transit Police Department budget there are sufficient funds on hand to cover the referenced $167,856 differential. (Union Tab 9)

VI. ISSUES 1 AND 2—DISCUSSION & OPINION

There is no question that the revenues that finance Minnesota's public services are receding even though the nation's gross domestic product is increasing albeit at a slow rate. This phenomenon is explained by the fact that when the gross domestic product was in free-fall between roughly 2007-IV and 2009-II, state, regional and local governmental units were the beneficiaries of Federal stimulus monies and programs like the "Cash for Clunkers," which enabled the former to continue operations even though taxes and other customary sources of revenues were receding. The former wave of Federal stimulus and special program monies is now a trickle. As a consequence, Minnesota's governmental units are finding it increasingly difficult to "fix" budgeted shortfalls, as they previously had. As federal monies are dried up and these units of government now face the daunting challenge of finding expenditure-savings and raising taxes to cover gaps between expenditures and revenues.

The testimony and exhibits making up the instant record are replete with information that convincingly demonstrate that the State of Minnesota will most assuredly cut expenditures in State FY 2012-2013 and, as a consequence, some of these yet unspecified cuts will be passed on to the Metropolitan Council. Accordingly, in addition to the loss of Federal monies, the Metropolitan Council will be losing State appropriations, both sources of revenues upon which the Transportation Division has relied. The Union dismisses the Employer's concern of prospective budget shortfall, largely because the calendar 2010 and 2011 shortfalls were miraculously resolved. While true, there is currency to the Employer's response that said shortfalls were "fixed" with one-time monies. Further, in need for Employer "fixes" will probably be greater over the coming biennium. In the opinion of its Financial Director, the Transportation Division may experience a State FY 2012-2013 shortfall that could reach $50 million or more. Relatedly, the record shows that Division does not have the unrestricted fund balances that would be needed cover this eventuality.

The Union suggested that what happens during State FY 2012 and State FY 2013 is of little concern to its 2010 and 2011 wage interests, effective October 1, 2010. The problem with this argument is that State FY 2012 commences on July 1, 2011, merely nine (9) months after the Union proposal's effective date. Thus, State FY 2012 is not as remote in time as the Union suggests. The more obvious concern with this argument is that an October 1, 2010 wage contract would most assuredly remain in effect through out the State FY 2012-2013 biennium and, consequently, must be honored and presumably, in significant part, with State FY 2012-2013 revenues.

The Union's more persuasive economic argument is that even in the face of a serious budgetary crunch, the LELS bargaining unit is so small, with fewer than 20 employees, that its October 1, 2010 wage proposal would imperceptibly dent the Division's operating expenditures. This fact does tend to marginalize the Employer's adverse economic climate and ability-to-pay arguments. Regarding the ability-to-pay matter, it is difficult to ignore the fact that the Employer saw fit to create the new Lieutenant and Sergeant classifications and, by doing so, nearly doubled the size of the bargaining unit. It is doubtful that the Employer would have taken this step if it had serious concerns about financing its new creation. Rather, the undersigned opines that the Employer's more pressing concerns are that the wages of the new classifications should be determined *via* comparable worth methods and that wage increases, if any, should be determined by the Metropolitan Council's pattern of internal settlements. The Union disagrees, arguing that the wages of the new classifications should be determined on the basis of external or market comparisons.

Pursuant to the conduct of job evaluations, the Employer determined that the new classifications of Lieutenant and Sergeant scored 336 and 406 Hay Points, respectively. The Hay Point scores for the subordinate FT Patrol Officer classification and superordinate Captain classification are 276 and 588, respectively. Thus, the Employer proposed a top (i.e., After Six Months) salary for the new classifications that fell between those of the FT Patrol Officer and Captain classifications, as shown below:

FY Patrol Officer	$70,450
Sergeant	$73,736
Lieutenant	$81,921
Captain	$87,477

The $73,736 Sergeant salary approximates the old Transit Police Supervisor's Step 3 salary; the $81,921 Lieutenant salary is the old Transit Police Supervisor's Step 6 (top) salary. The Employer's proposed October 1, 2010 two-step salary schedule for Sergeant's is $70,225 ("Starting Rate") and $73,736 ("After Six

Months Rate"). The Employer's proposed December 31, 2011 two-step salary schedule for Lieutenant's is $77,835 ("Starting Rate") and $81,921 ("After Six Months Rate"). The Employer persuasively argued that its method for determining the salaries of the new classifications was rational and resulted in a salary hierarchy where a classification's comparable worth (i.e., Hay Points) and salary are positively correlated.

Further, the Employer claimed that its 2010 and 2011 wage proposal is compliant with the Metropolitan Council's "2-percent" parameter, just as are each of its seven (7) negotiated agreements reached to date.[5] The Employer also claimed that the Union's wage proposal falls outside the ambit of internal settlements. In order to evaluate these twin claims, the undersigned constructed Tables 4 and 5.

Table 4 shows that even without 2010 and 2011 general salary increases, the Employer's wage proposal will increase 2009 to 2010 and 2010 to 2011 expenditures by 2.14 percent and 2.02 percent, respectively. These increases are primarily due to the increased cost of medical benefits. Keeping in mind that the costing model underlying Tables 4 and 5 does not expense step increases, it is noted that the Union's wage proposal will result in 2009 -2010 and 2010 -2011 expenditure increases of 4.90 percent and 2 percent, respectively. (See Table 5) These results support the Employer's internal equity or parameter claims.

These results would not surprise the Union. Its wage proposal is based

[5] Recall that the "2-percent" parameter requires that each settled contract's increase in expenditures may not exceed 2 percent per year, where wages, medical benefits and life insurance are expensed, but not steps.

Table 4 Costing Metropolitan Council's Final Wage Position

Calendar Year	2009 Base	2010	2010 Δ	2011	2011 Δ	% Δ 09-10	% Δ 10-11
Lieutenant Payroll (1)	$641,887	$641,887	$ -	$641,887	$ -	0.00	0.00
Sergeant Payroll (2)	$704,500	$703,938	($562)	$703,938	$ -	(0.08)	0.00
Subtotal	$1,346,387	$1,345,825	($562)	$1,345,250	($575)	(0.03)	(0.04)
Med/Dent: Single	$59,315	$66,670	$7,355	$73,857	$7,187	12.40	10.78
Med/Den: Family	$144,941	$171,423	$26,482	$196,386	$24,963	18.27	14.56
LTD	$1,701	$1,701	$ -	$1,701	$ -	0.00	0.00
Life Insurance	$7,516	$7,546	$30	$8,106	$560	.40	7.42
Subtotal (3)	$213,473	$247,340	$33,867	$280,050	$32,710	15.87	13.23
Total	$1,559,860	$1,593,165	$33,305	$1,625,300 ,	$32,135	2.14	2.02

(1) Analysis assumes 8 Transit Police Supervisors in 2009, 6 at Step 6 ($81,921), 1 at Step 4 ($76,473) and 1 at Step 3 ($73,888). On October 1, 2010, the 8 were promoted to Lieutenant. **2009 Base:** $641,887 = 6($81,921) + 1($76,473) + 1($73,888). **2010:** Same as 2009. **2011:** Same as 2009. **NOTE:** Per Metropolitan Council's "2-percent" parameter the inter-temporal steps that occurred between 2009-2010 and 2010-2011 are not included in the costing model.

(2) Analysis assumes 10 FT Patrol Officers making $70,450 in 2009 as well as from January through September 2010. On October 1, 2010, the 10 are promoted to Sergeant, with a Starting Rate of $70,225. **2009 Base**: $704,500 = (10 x $70,450). **2010:** $703,938 = 10[($70,450 x .75) + ($70,225 x.25)]. **2011:** Same as 2010. **NOTE:** Per Metropolitan Council's "2-percent" parameter subsequent to the October 1, 2010 promotions no inter-temporal steps are expensed.

(3) Fringe benefit costs are from revised Employer Exhibit 30, with corrections. Life insurance costs are the only fringe benefit costs that vary with salary.

Table 5 Costing LELS' Final Wage Position							
Calendar Year	**2009 Base**	**2010**	**2010 Δ**	**2011**	**2011 Δ**	**% Δ 09-10**	**% Δ 10-11**
Lieutenant Payroll (1)	$641,887	$664,825	$22,938	$664,825	$ -	3.57	0.00
Sergeant Payroll (2)	$704,500	$722,958	$18,458	$722,958	$ -	2.62	0.00
Subtotal	$1,346,387	$1,387,783	$41,396	$1,387,783	$ -	3.08	0.00
Med/Dent: Single	$59,315	$66,670	$7,355	$73,857	$7,187	12.40	10.78
Med/Dent: Family	$144,941	$171,423	$26,482	$196,386	$24,963	18.27	14.56
LTD	$1,701	$1,701	$ -	$1,701	$ -	0.00	0.00
Life Insurance	$7,516	$8,542	$1,026	$9,173	$631	13.65	7.39
Subtotal (3)	$213,473	$248,336	$34,863	$281,117	$32,781	16.31	13.20
Total	$1,559,860	$1,636,119	$76,259	$1,668,900	$32,781	4.90	2.00

(1) Analysis assumes 8 Transit Police Supervisors in 2009, 6 at Step 6 ($81,921), 1 at Step 4 ($76,473) and 1 at Step 3 ($73,888).On October 1, 2010, the 8 were promoted to Lieutenant, with a Starting Rate of $89,731 and an After 6 Months Rate of $94,203. **2009 Base:** $641,887 = 6($81,921) + 1($76,473) + 1($73,888). **2010:** $664,825 = 6($81,921 x .75 + $89,731 x .25) + 1($79,151 x .75 + $89,731 x .25) + 1($76,473 x .75 + $89,731 x .25). **2011:** Same as 2010. **NOTE:** Per Metropolitan Council's "2-percent" parameter the inter-temporal step effective April 1, 2010 is not included in the costing model.

(2) Analysis assumes 10 FT Patrol Officers making $70,450 in 2009 as well as from January through September 2010. On October 1, 2010, the 10 are promoted to Sergeant with a Starting Rate of $77,833 and an After 6 Month Rate of $81,931. **2009 Base**: $704,500 = (10 x $70,450). **2010:** $722,958 = 10[($70,450 x .75) + ($77,833 x .25)]. **2011:** Same as 2010. **NOTE:** Per Metropolitan Council's "2-percent" parameter the inter-temporal step effective April 1, 2010 is not included in the costing model.

(3) Fringe benefit costs are from revised Employer Exhibit 30, with corrections. Life insurance costs are the only fringe benefit costs that vary with salary.

solely on salary data garnered from the 25 metro-area police departments in Stanton Group V cities plus the Airport Commission Police Department and the University of Minnesota Police Department. The numerical size of all of these police departments approximates that of the Metro Transit Police Department.

Regarding the Sergeant classification, the Union showed that at $81,931, its October 1, 2010 top ("After 6 Months Rate") wage proposal approximates the market's average 2010 wage of $83,551. In contrast, the Employer's wage proposal for Sergeants is only $73,736, which is significantly below the market. As for Lieutenant's, the Union showed that at $94,203, its October 1, 2010 top ("After 6 Months Rate") wage proposal approximates the market's average 2010 wage of $96,013.; whereas, the Employer's Lieutenant wage proposal at $81,921 misses the "market" by a wide margin.

The Union's analysis of comparably situated Sergeants and Lieutenants in the marketplace is compelling. The undersigned does not know of a better setting from which to evaluate the "value" of a job. It goes without saying that the Employer would "red circle" for review any job within its set of job classifications that was experiencing above-average turnover, fearing that it might be losing its market edge and, thus, losing valued personnel to competitors.. Nevertheless, in this case, the undersigned concludes that since the Employer's job classifications are newly created and staffed totally from within, its salaries should lag behind the market's average rates of pay. The new classifications' job holders are just beginning to master their new responsibilities and honing job skills previously unused. That is to say, that the new classifications' new job holders are probably not as productive as their peers in the marketplace. Further, there is evidence in the record that when the new Sergeant classification was posted for bid, over one-half of the Police Department's FT Patrol Officers signed up for interviews—adequate labor supply at the prevailing pay level. Still further, there is no evidence that the Metro Transit Police Department is losing personnel to employers elsewhere—market demand pull at the prevailing pay level is not a problem. Nevertheless, market forces may play a role in valuing the classifications in question, just not at this point in time. Thus, <u>it is for this reason that the new Section 10.01 language being proposed by the Employer is rejected. Said language unrealistically excludes the market from the wage determination process.</u>

This discussion leads us back to a consideration of the efficacy of the Employer's use of job evaluations as a legitimate guide for valuing new job classifications. The Union questioned the accuracy of the job evaluation Hay Point results, suggesting they are too low and, so too, is the Employer's associated 2010 and 2011 salary proposal. The Union's first objection is poorly founded inasmuch as it did not request, as it could have, to have the instant job evaluations "reviewed." The undersigned has no way of knowing whether the committees that conducted the Lieutenant and Sergeant job evaluations did a credible job. A second round of job evaluations would have helped to assess the standing of the Union's question. The undersigned defers judgment on point to an administrative review, should the Union request same.

The Union's second objection was that the level the Employer's two-step wage proposal is too low. This may be true. However, the Union's two-step wage proposal would, in part, invert the structure of salaries in the Metro Transit Police Department, which is an unacceptable result. Under the Union's wage proposal, after six (6) months on the job, the Lieutenant salary would be higher than that actually paid to the Department's Captain and Deputy Chief. This would create havoc among the ranks in the Police Department. Further, the Union's wage proposal would likely, as the Employer argues, have a debilitating effect on overall labor relations at the Metropolitan Council. Given the current state of Metropolitan Council finances, the Employer does not need to have its largest bargaining units, all of which have settled within the Metropolitan Council's "2-percent" parameter, press for "whipsaw-based" wage settlements. Settlements, that may be out of reach when the parties' future term negotiations commence around July 1, 2011. Still further, the undersigned has no reason to believe that the parties would have voluntarily agreed to the Union's wage proposal. Indeed, interest arbitrators are loath to order wage settlements that fall outside the ambit of wage settlements that the parties might have reached themselves through hard bargaining. Finally, these conclusions weigh more heavily than the Union's meritorious inflation argument; thus, the undersigned cannot favor the Union's market-based wage proposal. Ultimately, therefore, <u>the undersigned finds in favor of the Employer's wage proposal, with one exception, namely, that both Lieutenant and Sergeant wages will take effect on October 1, 2010</u>. This exception to the Employer's wage proposal is prompted by two (2) considerations: first, the Employer failed to provide a rational for delaying implementation of the Lieutenant classification's two-step wage proposal until December 31, 2011, a point raised by the Union; second, the added expense of this modification to the Employer's wage proposal would be minimal, if any. Notice is made of the fact that in 2011 the Employer has 7 Lieutenants on staff, not 8 as is assumed in Table 4's costing model.

VII. ISSUE 3—DIFFERENTIAL—AMOUNT OF DIFFERENTIAL– Art. 10.03: EMPLOYER AND UNION ARGUMENTS, DISCUSSION AND OPINION

The Union's position is that the language in Section 10.03 shall be modified as follows:

> The salary of an employee who is promoted to a position which provides for a higher maximum salary than the employee's current position shall be the next increment higher than the salary last received by such employee in the lower classification; provided, however, that if the next increment is not at least ~~eight percent (8%)~~ <u>nine percent (9%)</u> higher than the salary last received, the employee shall be advanced an additional increment. If one so exists and thereafter shall increase in accordance with Section 10.03 (*Pay Progressions*) of this article.

The Employer's position is that Section 10.03 should not be modified, but rather deleted at end of the current CBA's term, December 31, 2011. Specifically, the Employer proposes that the following paragraph shall be added to Section 10.03:

> <u>Effective 12/31/11, this Section becomes obsolete. The salary of an employee who is promoted shall be the rate of pay defined in Appendix A..</u>

The Union argument in opposition to removing the language in Section 10.03 is straightforward. If, *arguendo*, the Employer's final wage position was awarded, Lieutenants would still be on the July 1, 2009 wage schedule. Thus, if a Sergeant making the Employer's "After 6 Months Rate" of $73,736 is promoted to Lieutenant, he or she could be placed on Step 1 or Step 2 of the old wage schedule, with salaries of $68,794 and $71,388, respectively. This, the Union convincingly argues, makes no sense because the promoted Sergeant would be paid a lower salary. Retaining Section 10.03 is the more sensible course. However, this problem is solved by the undersigned's decision to award the Employer's wage position, effective October 1, 2010 for both the Lieutenant and Sergeant classifications and not just for the Sergeant's classification.

The difference between the Sergeant's "After 6 Months Rate" and the Lieutenant's "'Starting Rate" is 5.6 percent [= ($77,835 - $73,736) ÷ $73,736)100]. The Union might well argue that this differential is insufficient, holding, as it does, that the differential should be 10 percent; that the parties' current language's 8 percent rate was negotiated and obviously exceeds the referenced 5.6 percent rate. The Union's current 9 percent differential language is a compromise between the negotiated 8 percent rate and it's initially sought after 10 percent rate. However, in the Arbitrator's opinion, this problem seems largely solved because under the ordered salary regime merely six (6) months after a Sergeant's promotion to Lieutenant, said Sergeant would be paid $81,121—an 11.10 percent differential. This observation was made by the Employer in its argument that Section 10.03 should be found obsolete effective December 31, 2011.

Regarding Issue 3, the Union also asserted that some interest arbitrators are disinclined to tamper with negotiated contract language, leaving such innovations for the parties to resolve. The undersigned is among this set of arbitrators. However, in this case, since both parties have agreed to abandon their six (6) step salary schedule and to replace it with a two-step salary schedule, it makes little sense to retain language now void of utility. It also makes little sense to wait until December 31, 2011 to hold that said language is obsolete. For these reason, Issue 3 is resolved as proposed by the Employer with a modified effective date of October 31, 2010.

VIII. AWARDS

Based on the above stipulation and analysis —

1. Section 19.01 Term of Agreement shall be as follows:

> The terms (sic) of this Agreement shall take effect on January 1, ~~2008~~ 2010 and shall remain in effect through December 31, ~~2009~~ 2011 and shall continue from year to year thereafter from January 1st through December 31st of each year unless changed or terminated in the manner provide by this action.

(~~Strikethrough~~ language deleted, underlined language added)

2. The job classifications and annual rates of pay appearing in Appendix A of the January 1, 2010 to December 31, 2011 CBA shall be as follows:

APPENDIX A

JOB CLASSIFICATION AND ANNUAL RATES OF PAY

Effective October 1, 2010	Starting Rate	After 6 Months Rate
Lieutenant	$77,835	$81.192
Sergeant	$70,225	$73.736

3. Section 10.01 in the January 1, 2010 to December 31, 2011 CBA shall remain unchanged::

> Job classifications shall be assigned to a pay progression schedule based upon the job classification's duties, responsibilities, difficulty, and minimum hiring requirements. Pay progression schedules for the job classifications

covered by this Agreement are set forth in Appendix “A” of this Agreement.

4. Section 10.10 in the January 1, 2010 to December 31, 2011 CBA shall be as follows:

The salary of an employee who is promoted to a position which provides for a higher maximum salary than the employee’s current position shall be the next increment higher than the salary last received by such employee in the lower classification; provided, however, that if the next increment is not at least eight percent (8%) higher than the salary last received, the employee shall be advanced an additional increment. If one so exists and thereafter shall increase in accordance with Section 10.03 (*Pay Progressions*) of this article.

Effective October 1, 2010, this Section becomes obsolete. The salary of an employee who is promoted shall be the rate of pay defined in Appendix A.

(Underlined language added.)

Issued and ordered on this 21st day of June 2011 from Tucson, Arizona.

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Mario F. Bogannno, Labor Arbitrator