

Mendota Heights, City of

IN THE MATTER OF THE ARBITRATION BETWEEN

TIME REQUIRED TO
RENDER AWARD: 28 DAYS

LAW ENFORCEMENT LABOR SERVICES, INC.
LOCAL No. 76,

INTEREST ARBITRATION
BMS CASE NO. 01-PN-968

- and -

CITY OF MENDOTA HEIGHTS

ARBITRATOR

William E. Martin
[REDACTED]

APPEARANCES

On behalf of Law Enforcement Labor Services, Inc.
Dennis O. Kiesow, Business Agent

On behalf of the City Of Mendota Heights:
Keven J. Rupp, Attorney
Ratwik, Roszak & Maloney, P.A.

JURISDICTION

This interest dispute was certified to arbitration by Lance Teachworth, Commissioner of the Bureau of Mediation Services on April 27, 2001. The arbitrator was selected by the parties on May 30, 2001. From dates provided by the arbitrator, the parties selected August 1, 2001 and the hearing commenced on that date, at 9:00 a.m. in the Mendota Heights city office building.

Following the hearing, post hearing briefs were scheduled to be transmitted to the arbitrator by facsimile transmission on August 13, 2001. Both briefs were received by the

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arbitrator by August 14, 2001 and the hearing was closed on that date.

ISSUES FOR IMPASSE RESOLUTION

The Bureau of Mediation Services certified the following issues as being at impasse in this case:

1. Duration - Determine Length of Contract - Art. XXIX
2. Wages - Determine Wage Rates 2001 - Art. XXII
3. Wages - Determine Wage Rates 2002, If Awarded - Art. XXII
4. Shift Supervisor Pay - Determine Pay For Senior Officer When Supervisor Not On Duty - New
5. Insurance 2002 - Determine Employer Contribution For Cafeteria Insurance Program For 2002, If Awarded - Art. XVI
6. Deferred Comp 2002 - Shall Deferred Comp Provision Be Included In The Contract Including Employer Contribution - New
7. Clothing Allowance - Shall Clothing Allowance Provisions For Investigator/Detective Be Included In The Contract Including Dollar Amounts - New
8. Investigator Pay - Shall Supplemental Pay Provisions For Investigators Pay Be Included In The Contract - New
9. Shift Premium - Shall Shift Premium Provisions Be Included In The Contract - New
10. Standby - Determine Who Shall Be Eligible For Standby Pay - Art. XVII

The final positions of the parties on the impasse issues were submitted as required by the Commissioner in his April 27, 2001 certification. The party's positions are set forth below as each impasse issue is discussed and resolved. The City agreed in it's final position letter to the Union's proposal on Issue 10, Standby, thus removing Issue 10 from impasse arbitration.

I. ISSUE I. DURATION-DETERMINE LENGTH OF CONTRACT-ART. XXIX

A. Positions of the Parties

1. LELS Position

The Union's final position is that the agreement should be for two years. The proposed contract language is:

ARTICLE XXIX DURATION

This AGREEMENT shall be effective as of January 1, 2001 and shall remain full force and effect until the thirty-first day of December, 2002.

2. City's Position

The City's position is that the duration of the party's next contract should be one year.

The City's proposed contract language is:

ARTICLE XXIX DURATION

The AGREEMENT shall be effective as of January 1, 2001 and shall remain in full force and effect until the thirty-first day of December, 2001.

B. Supporting Argument of the Parties

1. LELS Supporting Argument

LELS acknowledged that the parties have had a mixed history regarding of the length of their most recent agreements, but argued here that very recent strains in a previously "excellent" relationship show both why the most recent contract was for one year and also why the parties now need a two year agreement. LELS explained the most recent one year CBA in terms of a need to return quickly to the bargaining table to "rectify" an arbitral decision on a grievance submitted on the subject of insurance benefits. LELS testified, however, that these recent negotiations (leading to this interest arbitration) were difficult and that a break from constant negotiation is now necessary. LELS contends that a two year agreement will permit time for the strains of constant bargaining to heal and serve the value of labor relations stability.

2. City Arguments

The City submitted the following information regarding duration of the party's CBA's over the past ten years:

<u>Contract Duration</u>		<u>Contract Signature Date</u>
1/1/00-12/31/00	(1 year)	5/9/00
1/1/98-12/31/99	(2 years)	6/21/98
1/1/97-12/31/97	(1 year)	4/21/97
1/1/95-12/31/96	(2 years)	6/8/95
1/1/93-12/31/94	(2 years)	8/25/93
1/1/91-12/31/92	(2 years)	3/15/91

Based upon the above information, the City argues that there is no pattern of two year agreements in the history of the parties. Given the lack of such a pattern, the City argued that the controlling principle here should be the traditional preference for negotiated settlements over terms fixed by interest arbitration. This preference, according to the City, mandates that the parties return to negotiations and deal with the terms for year 2002 by the preferred method.

C. Discussion and Conclusions

Generally, interest arbitrators rely upon internal and external comparisons or are guided by well accepted principles of labor relations, including a desire for stability in labor relations and a preference for negotiated over dictated terms. Here, for example, LELS argues the previous one year CBA, was intentional to permit the parties to revisit certain insurance benefit issues in negotiations sooner rather than later.

While there is no external comparison information presented on the duration issue, the parties do show that during the past ten years they have had 4 two year contracts and 2 one year contracts. If anything, the internal pattern until recently has been for two year contracts. Generally, contracts of more than one year are thought to contribute to labor relations stability. The Union argues that this particularly needed now, as the party's relations have been strained by constant negotiation for their prior contract and for this one. Also, if a one year duration were to be selected here, that year would end soon, necessitating an almost immediate return to

negotiation while feelings remain strong.

Because the party's pattern, at least until very recently, has been for two year agreements, and because labor relations stability is likely to be enhanced by a two year term, I conclude that a two year duration should be selected here. The brief respite from bargaining provided by a two year term hopefully will increase the chances that when the parties return to bargaining they will be able to successfully negotiate their next contract.

D. Award

For the reasons stated above, I award a clause providing a two year contract duration. For the contract language see the Union's proposal at I,A,1 above.

II. ISSUE 2- WAGES - DETERMINE WAGE RATES 2001 - ART. XXII

A. Positions of the Parties

1. LELS Position

The Union has proposed a 4% wage increase for 2001, which would result in the following change to the contract:

ARTICLE XXII WAGE RATES (MONTHLY BASE RATE)

	<u>2000</u>	<u>20001</u>
Start (1 st six months)	\$3,106	\$3,230
(2 nd six months)	\$3,288	\$3,420
2 nd year	\$3,554	\$3,696
3 rd year	\$3,811	\$3,963
After 36 months of continuous employment	\$4,070	\$4,323
<u>Effective January 1, 2001, the salary range will increase by 4%</u>		

2. City's Position

The City has proposed a 3% increase for 2001, which would result in the following change to the contract:

ARTICLE XXII WAGE RATES (MONTHLY BASE RATE)

	<u>2000</u>	<u>20001</u>
Start (1 st six months)	<u>\$3,106</u>	<u>\$3,199</u>
(2 nd six months)	<u>\$3,288</u>	<u>\$3,387</u>
2 nd year	<u>\$3,554</u>	<u>\$3,661</u>
3 rd year	<u>\$3,811</u>	<u>\$3,925</u>
After 36 months of continuous employment	<u>\$4,070</u>	<u>\$4,192</u>

B. Supporting Arguments of the Parties

1. LELS Supporting Arguments

The Union's case for a 4% wage increase in 2001 (effective January 1, 2001), takes into account the traditional factors used in interest arbitration to evaluate economic proposals. First, LELS presented financial data to show that the City has the ability to pay this increase, which totals approximately \$24,000 for 2001. Second, LELS argued that internal Pay Equity Act principles in Minnesota would not be violated by the LELS 4% request. Third, LELS argued that the Mendota Heights Police Officers' relative pay rank has been declining within the Stanton Group 6, in which it is grouped with comparable municipalities. If the City's 3% proposal is accepted, LELS argues, the relative position of the unit will decline even further. In this regard, LELS showed that the average increase in the Stanton Group 6 was 3.4% for 2001. If the bargaining unit gets 4%, it will stay close to where it was in 2000 raising to sixth within the 24 city group. In 1996, the bargaining unit was third. If the City's 3% offer is selected, the bargaining unit will fall to eleventh in Stanton Group 6. The LELS fourth argument is based upon the cost of living increase for year 2000 of 3.9%. LELS argues the City's 3% offer would result in a real decline in wages. LELS concludes that its 4% proposal is justified because it moves the unit back in the direction of its traditional Stanton Group 6 ranking and because it

approximates recent cost of living increases.

2. City's Supporting Argument

The City did not dispute the LELS presentation on ability to pay and internal pay equity analysis, essentially agreeing that the difference between the LELS demand and the City's offer was not beyond the City's ability to pay and would not place the City out of Pay Equity Act compliance. Also, there was no major disagreement about the Union's external comparisons and its information on cost of living increases. It should be noted that the City presented Stanton Group 6 comparison statistics indicating that the comparison for newly hired officers is not the same as that for senior officers. For minimum salary officers the Stanton Group 6 ranking was 4 in 1997 and would be 5 in 2001 under either the LELS or the City's proposal. Thus, the City argued that the Union's external comparison did not apply across the entire police force. Also, the City emphasized that the bargaining unit wages remained above the average of Group 6 cities at all times. There was no disagreement that Stanton Group 6 is the appropriate group for external comparison.

The City's primary argument on the 2001 wage proposal was that even if there was no overwhelming Pay Equity Act issue internally, the appropriate standard to apply here is an internal comparison with other Mendota Heights workers. Comparing this bargaining unit to other city employees, at least in terms of wage increases, reveals that since 1995 there has been a consistent pattern of wage increases treating all union and non union employees alike. The City presented the following internal comparison information:

<u>Year</u>	<u>LELS</u>	<u>Employee Group</u> <u>Public Works</u>	<u>Non-Unionized</u>
2001		3%	3%

2000	3%	3%	3%
1999	3%	3%	3%
1998	3%	3%	3%
1997	3%	3%	3%
1996	3%	3%	3%
1995	3%	3%	3%

Additionally, the City showed that the unbroken pattern of consistent wage increases across-the-board for all city workers was set each year by the City Council and agreed to by both of the City's Union groups in negotiated settlements later. The City argues that the goal of interest arbitration is to approximate what would have been negotiated and that the historical pattern should be followed here as the best evidence of what a negotiated settlement most likely would have been. Also, the City argues that to give a larger increase now to the last group settling would be destabilizing in terms of further negotiations with both union groups. The City concludes this should not be done where as here there is no compelling external inequity regarding this unit, which continues to receive above average pay in its external comparison group even with the 3% increase received by all other Mendota Heights employees.

C. Discussion and Conclusion

The familiar and appropriate criteria to be applied in interest arbitration of wage issues are ability of the employer to pay, internal comparisons including Pay Equity Act analysis, external market comparisons with comparable governmental entities and fairness indicators such as cost of living changes.

In this case ability to pay is not an issue. The LELS presentation made clear that the City is in good financial shape, and the City did not dispute this. Perhaps the City's good financial shape over time accounts in part for the bargaining unit's relatively good standing within Stanton

Group 6. Indeed, among all Stanton groups, there are variations among public employers as to pay rates, tax bases and other factors that effect ability to pay. The aggregate of those economic factors create the differences in pay rates both between and within comparison groups.

The evidence here also was clear that there is no significant Pay Equity Act issue in this case. The City will remain in compliance with its Pay Equity Act obligations regardless of whether the LELS 4% proposal is accepted, or the City's 3% increase is implemented, or some increase in between is awarded.

Although pay equity is not a problem, the City does base its wage case upon an internal comparison. The comparison it advances is a consistent six year history of equal across-the-board increases for all city employees including this bargaining unit. To break from this pattern would, according to the City, depart from what negotiations in the past have endorsed as the regular pattern. Again, the City argues that the Arbitrator should use the model of a negotiated settlement as a major factor, and that the history of consistency in Mendota Heights is the best evidence of what a negotiated settlement would have been based upon the pattern of internal increases. The City argues that the Union is attempting to set rather than, as it historically has done, follow the pattern.

While internal comparisons are important, they should not be controlling in every case. To do so would not be to elevate negotiation as the principles of PELRA require. Rather it would permit employers to dictate wage increases whenever the Union has for some period agreed to employer internal patterns. PELRA does not intended to replace negotiation with Interest Arbitration, but neither does it intend to use interest arbitration to freeze patterns set initially by employers. If the amount selected by the City Council is fair and appropriate when

applied to the bargaining unit in question, the internal balance sought by the city should be a major factor in an appropriate outcome. There are, however, a number of factors here indicating that the 3% proposal of the City is too low. These factors were emphasized in the LELS presentation and include the decline of the Union's wage rank within the appropriate comparison group, the average of recent settlements within that group, and the somewhat accelerating recent cost of living increases. The Union argues that these factors all support a 4% increase to catch the unit up to its traditional Stanton Group 6 position.

While there is force to the LELS argument, the numbers do not support the 4% request either, especially in view of the internal comparison presented by the City. Also, the average increase in Stanton Group 6 for 2001 was 3.4% and overall urban Midwest increase in cost of living was 3.6%. Taking these factors into account, and seeking at least to prevent this bargaining unit from falling farther in 2001 in relation to its external comparison group, I conclude that the wage increase for 2001 for the patrol officer's unit should be 3.5%.

D. Award

Having concluded that the appropriate increase in wages for the patrol officers unit here is 3.5% for the year 2001, I award that amount which is to be paid retroactive to January 1, 2001.

The CBA shall state:

<u>ARTICLE XXI (WAGE RATE)(MONTHLY BASE RATE)</u>	
	2001
Start (1 st six months)	3215
(2 nd six months)	3403
2 nd year	3678
3 rd year	3944
After six months of continuous employment	4212

III ISSUE 3 - WAGES - DETERMINE WAGE RATES 2002, IF AWARDED - ART - XXII

Since the LELS two year duration proposal has been awarded, the next impasse issue to be decided is wages for the second contract year, 2002.

A Positions of the Parties

1. LELS Position

The Union proposes a 3.5% increase for 2002, which would result in the following wages using the Union's proposal for 2001 as the base:

ARTICLE XXII WAGE RATES (MONTHLY BASE RATE)

	2001	2002
Start (1 st six months)	\$3,230	\$3,343
(2 nd six months)	\$3,420	\$3,540
2 nd year	\$3,696	\$3,825
3 rd year	\$3,963	\$4,102
After 36 months of continuous employment	\$4,233	\$4,381
<u>Effective January 1, 2002, the salary range will increase by 3.5%</u>		

The rates specified in the LELS proposal for 2002 are premised on a 3.5% increase of the wage rates proposed for 2001, which would have been increased in 2001 by 4%, if the LELS proposal for 2001 had been accepted. I actually awarded a 3.5% increase for 2001. (See II. D. above).

2. City's Position

The City proposed a 2.5% increase for 2002 if a second contract year were to be awarded, as I have done. (See I. D. above) The City's 2.5% proposal for 2002 (added to its 3% proposal for 2001) would result in the following 2002 wage rates.

ARTICLE XXII WAGE RATES (MONTHLY BASE RATE)

2002

Start (1 st six months)	\$3,279
(2 nd six months)	\$3,472
2 nd year	\$3,753
3 rd year	\$4,023
After 36 months of continuous employment	\$4,297

B. Supporting Arguments of the Parties

1. LELS Supporting Arguments

The LELS case for a 3.5% increase in 2002 is not appreciably different than its argument for a 4% increase in 2001. LELS exhibits show that there is no real issue regarding the City's ability to pay or regarding compliance with the Pay Equity Act. LELS' primary argument is based upon its external comparison with Stanton Group 6 municipalities. This comparison for 2002 shows that, with eight cities reporting, the average of increases for patrol officer units is 3.4%. If Groups 5 and 7 are added, the average increase reported is 3.5%. Of course, many cities have not yet settled upon increases for 2002, but LELS argues the clear trend is 3.5%. LELS argues that this average would keep the Mendota Heights patrol officer unit in its traditional relative position among Stanton Group 6 units. Additionally, LELS argues that the cost of living increase from May of 2000 to May 2001 has trended up in the Midwest to 4.0% adding force to the argument that 3.5% is a fair increase for the year 2002.

2. City's Supporting Argument

The City's position on wages for 2002 was first that a second year of increases should not be awarded (see its position on duration) and alternatively that if a second year is awarded the wage increase for 2002 should be 2.5%. The City's supporting case again de-emphasizes external comparisons. As to 2002, the City's argument is that very few settlements have been reported and the award here should be 2.5% to avoid creating an internal problem for the City in

view of it's policy on internal wage consistency (see part II, B,2 above).

C. Discussion and Conclusions

The LELS position on year two of the contract is supported by its exhibits on external comparisons, average increases reported for comparable cities, and the recent trends in cost of living. There are of course as yet no internal comparisons in Mendota Heights. The City's argument that the Union should not set the trend of wages for non union workers or workers in other units has some force. But the counter argument that the City should negotiate the wage for this unit not ultimately determine it by fiat is equally forceful. Applying all of the factors relevant to wage determinations in interest arbitration, the evidence here shows that the Union's requested increase of 3.5% is fair, especially in light of the average of reported settlements in comparable cities and recent cost of living increases. I therefore conclude that 3.5% increase should be granted in year two of the CBA.

D. Award

With a 3.5% increase for 2002, based upon the 3.5% increase awarded above for 2001, Article XXII of the CBA shall state in full:

ARTICLE XXII WAGE RATES (MONTHLY BASE RATE)

	<u>2001</u>	<u>2002</u>
Start (1 st six months)	3215	3328
(2 nd six months)	3403	3522
2 nd year	3678	3807
3 rd year	3944	4082
After 36 months of continuous employment	4212	4359

IV ISSUE 4 - SHIFT SUPERVISOR PAY - DETERMINE PAY FOR SENIOR OFFICER WHEN SUPERVISOR NOT ON DUTY - NEW

A. Proposals of Parties

1. LELS Proposal

LELS proposes adding the following to the CBA:

Article XV. Working Out of Classification:

15.1 An employee who assumes the duties of shift supervisor during the absence of a supervising officer shall receive additional pay in the amount of \$.50 hour.

2. City's Position

The City proposes that no change be made on this subject in the CBA.

B. Supporting Argument of the Parties

1. LELS Supporting Argument

The Union argues that Article XV already provides extra pay for persons working out of classification by assignment and that its newly proposed language at 15.1 of the CBA would extend this principle as a minimal benefit when employees work above their regular class for only a short period. LELS argues that the senior patrol officer must work up, with greater responsibility, whenever a supervisor is not present, and this greater responsibility merits the small premium of \$.50 per hour proposed here. The Union contends that this benefit is given to other City employees and to patrol officers in other metro cities. LELS supported it's proposal with exhibits showing Mendota Heights policy statements giving senior patrol officers supervisory authority in a variety of situations where a Sargent or other supervisor is not on duty. With respect to external comparisons, the Union exhibits show that six metro area cities provide a benefit similar to that requested here.

2. City's Supporting Argument

The City argues that senior patrol officers already have pay increases built into their

wages as they become more senior. Thus, except for actual out of class assignments, they already have a wage constructed on the possibility that they will be senior on a shift on which there is no supervision. Also, for difficult situations, the City argued that a supervisor is always on call. The City counters the LELS argument on external comparisons by noting that this benefit is not typically provided by other cities, although a small minority has such a benefit. Further, according to the City, other Mendota Heights employees do not have such a benefit.

The City argues, based upon all the factors to be evaluated that the Union has not made the strong case normally required to add a new benefit, or contract provision, through interest arbitration.

C. Discussion and Conclusion

Generally in interest arbitration, the party seeking a new provision in the CBA has a heavy burden to demonstrate a clear need for such a change. This is because the normal, preferred method of making such changes is through negotiation and agreement of the parties. Such changes should not be too easily granted in interest arbitration.

Here the Union has not met it's burden of showing such a clear need. While there is some logic to its position that this benefit would reward the exercise of additional responsibility, there is also logic to the City's position that such rewards are already built into the regular pay scale. Certainly, the internal and external comparisons are far from compelling and show, if anything, that this is not a regular benefit in most comparable units or in the City of Mendota Heights. I therefore conclude that the LELS proposal should not be awarded.

D. Award

No change to Article XV of the CBA is awarded.

**V. ISSUE 5 - INSURANCE 2002 - DETERMINE EMPLOYER CONTRIBUTION
FOR CAFETERIA INSURANCE PROGRAM FOR 2002, IF AWARDED - ART.**

XVI

A. Proposals of the Parties

1. LELS Proposal

The Union proposed the following provision:

Article XVI - Insurance

16.1 The Employer will contribute up to maximum of four hundred sixty three dollars (\$463.00) per month during 2001, toward health, term life, dental and long term disability insurance. For 2002, the employer shall increase this contribution by 80% of the increase in premiums for family coverage insurance.

The contribution of \$463.00 per month during 2001 was agreed upon between the parties. (See V, A, 2 below). The impasse is with regard to year 2002. The Union's position for 2002 is underlined in the above proposal.

2. City's Proposal

The City proposed the following provision in the event a two year contract were to be awarded (see Issue I on duration, above)

Article XVI - Insurance

The Employer will contribute up to a maximum of four hundred sixty three dollars (\$463.00) per month during 2001, toward health, term life, dental and long term disability insurance. The EMPLOYER will contribute up to a maximum of four hundred eighty-six dollars (\$486.00) per month during 2002, toward health, term life, dental and long term disability insurance.

The City's proposal reflects agreement of the parties regarding the \$463 insurance contribution for 2001. The Employer's position regarding 2002 about which the parties are at

impasse is underlined above and represents a 5% contribution increase. Of course, the Employer's primary position was that the CBA should have only one year's duration. The increase of 5% for 2002 here is an alternative position.

B. Supporting Arguments of the Parties

1. LELS Supporting Arguments

LELS has proposed that the Employer should pay at least 80% of any insurance plan premium increases for family coverage in 2002. This 80% proposal is designed to prevent the continuation of difficulties created in the bargaining unit by the rising cost of insurance in recent years. The two year contracts in the past have contained "me too" language in their second years, providing that employer contributions increase will be at least as much for the bargaining unit as the contribution increase for non-union employees of the City under the same plan. The problem with "me too", according to the Union, is that this permitted the Employer to set the contribution unilaterally. LELS argues this has been done in a way that has decreased the Employer's percentage of contribution for family coverage and failed to keep pace with other Stanton Group 6 cities.

The information presented by LELS shows that the percentage of employer contribution has declined from 69% in 1999 to 63% in 2001. Meanwhile the Stanton Group 6 average is 70% in each of the last three years. Mendota Heights has fallen in Group 6 from 10th to 19th in percent of contribution. Of course the percent of contribution is not the dollar amount. In the period 1999 to 2001 the Employer contribution has gone from twelve dollars above the Stanton Group 6 average to two dollars below the Stanton average.

The LELS 80% of premium increase proposal for 2002 is designed to prevent a repeat of

the recent history of decreasing percentage of employer contribution.

2. City's Supporting Argument

The City has premised its proposal on an internal comparison argument. Since Union contracts in the City have had "me to" provisions until now, the contribution for all city employees have been the same since 1995, as they are under the agreement of the parties for 2001. According to the City, this consistency shows what the parties would likely have agreed upon had they negotiated this benefit for 2002.

The City's proposal for 2002 departs from the prior practice of using "me to" language for the second year of a contract and proposes a 5% premium contribution increase for family coverage premiums up to \$486.00 as an attempt to predict what the employer contribution will be in the City as a whole in 2002. While it is unknown what the premium increase will be in 2002, the parties apparently expect that the increase will be large enough that the employer contribution under the Union's proposal for 2002 would be larger than the \$486.00 proposed by the Employer. At the hearing, the City argued that, if its 5% proposal were to be rejected the Arbitrator, as a fall back position, the contract should return to the "me too" principle used uniformly in the past six years by the parties.

C Discussion and Conclusion

The parties both propose positions on the Employer's insurance premium contribution for year two of the contract which create problems of evaluation because no one knows at this time what premium increases will be. Of course, both parties assume that the premiums will go up. The Union's position creates a problem because it could require a disproportionately large increase if premiums escalate by a very large amount. Likewise the Employer position would

result in an unfairly low contribution if premiums skyrocket in 2002.

In the face of these uncertainties, it is better to elect the City's fall back "me too" position. The virtue of such a plan is that contributions will be tied as they are in many contracts to the contributions given to all City employees. Such a provision greatly restricts the City's ability to treat this unit unfairly and makes it likely the unit will be subject to the same economic realities which will effect the Employer's treatment of all city employees. It is also a virtue of the "me too" approach here that the parties have used this method in year two of two year contracts for a number of years. Also, its continued use now will serve the values inherent in the factor of internal comparisons as discussed above. If anything, the virtues of internal consistency are more important in the area of benefits than they are for wage increases. In the wage area, equal percentage increases may ignore individual differences based upon different wage rates and the reality of different jobs. Insurance benefits are equal however and equal increases of contributions are often the rule.

D Award

Based upon the above analysis, the following contract language is awarded:

Article XVI Insurance

The Employer will contribute up to a maximum of four hundred sixty three dollars (\$463.00) per month during 2001, and will increase the maximum contribution for 2002 at least to an amount equal to other non union employees for 2002 toward health, term life, dental and long term disability insurance.

VI ISSUE 6 - DEFERRED COMP 2002 - SHALL DEFERRED COMP BE INCLUDED
IN THE CONTRACT INCLUDING EMPLOYER CONTRIBUTION - NEW

A. Proposals of the Parties

1. LELS Proposals

The Union proposes that the following provision be added to the CBA:

Article XVI - Insurance

16.2 Effective for 2002 enrollment, an employee who fashions a benefit plan which does not use the entire amount of the employer contribution, shall received the difference between the employer contribution and the selected benefit plan costs as an addition to payroll or shall have the option of placing said amount in an approved deferred compensation plan.

2. City's Proposal

The City's proposal is that no new provision for deferred compensation be added to the CBA. As is detailed below, the City also has argued that the Union's proposal here is not a term and condition of employment under Minn. Stat. 179A.03, Subd. 19. Accordingly, the City argues that not only should the Arbitrator not award the Union's proposal, but also that the Arbitrator has no jurisdiction under PELRA to do so.

B. Supporting Argument of the Parties

1. LELS Supporting Arguments

The parties submitted special briefs on this complicated issue which involves pension and fringe benefit regulation including federal tax regulations for approved benefit plans as well as special rules for pensions and deferred compensation in Minnesota. By this proposal the Union seeks to have any amount of the Employers maximum insurance or cafeteria plan contribution not used fully to fund a particular employee's cafeteria plan benefit either paid to the employee as wages or used to fund a deferred compensation plan. The Union argues that the Employees already receive cash wages and have individual deferred compensation accounts. Thus, the Union concludes that it's proposal meets the definition of a term on condition of employment

under PELRA and is subject to the Arbitrator's jurisdiction following certification of this issue by the Commissioner.

On the merits of its proposal, the Union argues that until 1999 the employees could elect from among benefits in the flexible or cafeteria plan and that employer dollars not fully used for regular cafeteria plan benefits could be directed by the Employees to pay for whole life insurance policies. The City facilitated this by sending those dollar amounts directly to the insurance agents who sold the Employees the policies. The Union argues that in 1999 the City unilaterally discontinued this option achieving a windfall at the employees' expense amounting to \$46,012.20.

Finally, the Union supports its deferred compensation proposal by arguing that "many comparable cities provide this benefit for their employees". —

B. City Supporting Arguments

The City argues that, by requesting the option of a deferred compensation contribution, the Union has proposed a provision that is not a term and condition of employment. The City argues that this is so because the deferred compensation option is essentially a "retirement contribution" specifically excluded from the PELRA definition of "terms and conditions of employment." The City links deferred compensation to retirement plans by observing that "deferred compensation plans are a popular fixture in retirement benefits packages..." In particular, the City argues here that any employer contribution to a Minnesota Chapter 457 plan would be a retirement contribution and thus not a term and condition of employment.

To complicate matters, the City has argued alternatively that it would be illegal to contribute Employer Section 125 cafeteria plan dollars to a Chapter 457 deferred compensation

plan citing 26 U.S.C. § 125(d)(2). It argues as well that even if the Arbitrator could direct that Section 125 cafeteria plan dollars be used to fund a Minnesota 457 deferred compensation plan that Minn. Stat. 356.24, subd.1 makes such a contribution illegal except for grants of up to \$2000 that match the employee's own contribution. And, even this exception is limited to circumstances the City argues are not present here. The City's conclusion is that an award of the Union's proposal here would require the Employer to make an illegal contribution.

The City does acknowledge that the cash option proposed by the Union creates different issues than the deferred compensation plan option. However, the City contends this option is fraught with legal pitfalls also. Primarily, the current Section 125 flexible benefits plan is structured and approved on the basis that any employee cafeteria plan election resulting in a deduction from the employees pre tax income will result in the difference being treated as "taxable cash" or income. This amounts to an election of "taxable cash" from employee income under the plan, and there is no provision in the plan that would allow the employee to receive the City's insurance contribution or employer dollars as taxable cash. Thus, the City argues the Arbitrator has no authority, (or should not) award a provision that would require an amendment to its approved Section 125 flexible benefits plan which current applies to all City employees. The City argues that it's policy and history of treating employees equally as to cafeteria benefits would require it to fund the benefit for everyone, creating effects well beyond this bargaining unit.

Finally, the Employer argued that there is no windfall involved here but that if awarded this benefit the Employees would receive a new and increased benefit. To support this argument, the City points out that in 1999 it did not simply make a unilateral change in insurance benefits.

Rather, it followed Article XVI of the CBA, but also discontinued its practice of purchasing whole life policies from the employer's cafeteria plan contributions because the practice was illegal. This change, to correct an illegal practice, was grieved by the Union and the grievance was dismissed by Arbitrator Jacobs on timeliness grounds. However the Arbitrator also said the grievance would not have been sustained even if it had been timely. Thus, the City characterized the benefit sought here as a new one that would change the status quo with no quid pro quo to the City. Further, the result of an award to the Union here would be a conversion of a fringe benefit to cash, essentially wages, a philosophy change that should be left to bargaining and not imposed in Interest Arbitration.

C. Discussion and Conclusion

There are three levels of argument relating to the Union's cafeteria plan proposal. The first question is whether the Arbitrator has jurisdiction under PELRA to make such an award. The second question is whether the Union's proposal would be illegal under the interlocking provisions of the federal tax code and Minnesota statutes relating to public employer fringe benefit plans. The final issue is whether, if within the arbitrator's jurisdiction, and not illegal under the relevant statutes, the proposal should be awarded under the regular principles applied by interest arbitrators.

While the jurisdictional question is complex, it must be answered or there is no authority to proceed with the other questions. Reviewing the relevant arguments carefully, I am not convinced that, following certification of this issue, I am without jurisdiction on the ground that the proposal at impasse is not a term or condition of employment. Assuming that the City is correct that retirement plans are excluded by PELRA as not being terms and conditions of

employment, it is also clear that cash payments are not excluded. The Union's alternative deferred compensation contribution is the feature of the proposal that creates the retirement plan issue. Clearly, however, all deferred compensation plans are not retirement plans. In any event, the Union's "cash in lieu" of proposal would seem to place at least that part of this proposal, squarely within my jurisdiction.

The City's arguments regarding the legality of the deferred compensation feature of the Union's proposal are also complex. They pose significant questions, but they are questions that need not be resolved here. I have decided not to award the Union's proposal and therefore the illegality question is effectively mooted.

I have decided not to award the Union's proposal under the normal principles for impasse arbitration. In terms of equity and internal analysis, LELS has argued that the award of this benefit would simply correct the injustice and windfall of the Employer's "unilateral change" in 1999 when it discontinued funding whole life insurance policies with its contribution to employee insurance benefits. However, that change was grieved and for whatever reason, as an issue of timelines or on the merits, the status quo was established by that Arbitrator under the CBA. Further, the change in 1999 was required to keep the benefit plan in legal compliance with IRS provisions covering flexible benefit cafeteria plans. When the plan was brought into compliance, the changes effected all City employees, not just this unit, and the maximum employer contribution was unchanged. Also, the election of benefit rules were fixed in accordance with legal regulations and the previous negotiations of the parties.

While the Union has argued that this dispute is in effect about dollars received by employees and is simply to replace dollars lost in the change, the issue is really more complex.

As the Employer points out, fringe benefits have been handled uniformly for all City employees in one plan. This is a typical philosophy for many if not all public employers, and the trend to uniformity has increased in all employment settings as a result of non-discrimination provisions in fringe benefit regulations such as the IRS regulations here. While these regulations may permit exceptions for collective bargaining agreements, this merely emphasizes the wisdom here of applying the familiar preference for collectively bargained changes over those imposed in interest arbitration. Certainly, the principle is applicable here that the burden should be on the Union to justify such a change, which would differentiate its unit from other employees in the same plan. I find that the Union has not presented a convincing case showing a need to depart from the preference for bargaining here. First, although the Union showed that eight cities have some provision similar to that sought here, this is a minority of comparable municipalities. Also, the provisions of other cities in evidence vary considerably and most of these do not permit full use of the employer contributions in the manner sought by LELS here. Further, there is no indication in the cases shown how these Cities have historically balanced their fringe benefit programs among all employee groups.

I conclude that simply converting employer contributions to cash here would represent a major change in fringe benefit philosophy that should not be imposed in Interest Arbitration. This is in part because the repercussions of such a change in the City as a whole are difficult to predict. Indeed, although I have not addressed the Employer's argument that such a change would be illegal, the complexity of that issue (one among many) helps to show why fringe benefit changes, other than the size of the employer contributions, are best be left to bargaining. Also, allowing a cash option could result in employees electing their insurance benefits

differently than they now do in order to get the cash. This could result in unforeseeable premium changes, or in other changes in the cafeteria plan as a whole. For these reasons, I conclude that the Union proposal should not be awarded in Interest Arbitration.

D. Award

The Union proposal on deferred compensation for 2002, is not awarded.

VII ISSUE 7 - CLOTHING ALLOWANCE - SHALL CLOTHING ALLOWANCE PROVISIONS FOR INVESTIGATOR DETECTIVE BE INCLUDED IN THE CONTRACT INCLUDING DOLLAR AMOUNTS - NEW

A Proposals of the Parties

1. LELS Position

Article XVIII, Uniforms

18.3 The City shall reimburse the INVESTIGATOR/DETECTIVE for clothing and equipment purchases up to \$500/year.

2. City's Position

No new provision should be added to the contract.

B Supporting Argument of the Parties

1. LELS Supporting Argument

The Union argues that the City currently pays a \$350 clothing allowance to investigators and that there should be no objection to including this in the CBA. Additionally the Union argues that the allowance has not increased for "many years" and that the Union's proposal of \$500 is supported by a comparison with comparable cities.

2. City's Supporting Argument

The City argued that investigators have received \$350 per year for civilian clothes as a matter of city policy, and that they also use the CBA uniform maintenance and cleaning allowance for up to \$238.07 to clean the civilian clothes they wear on the job. This allowance will go up by agreement to \$242.83 in the 2001 CBA. The City argues the current benefit is sufficient and comparable to such benefits in comparable departments.

C Discussion and Conclusion

Since the “uniform allowance” for investigators is a term or condition of employment already granted by the City, there is no reason that it should not be included in the agreement. Because the relationship of uniform (here plain clothes) purchase and cleaning allowances vary in different departments, the external comparisons are not clear. It is clear, however, that plain clothes detectives work under conditions that are harder upon their clothes than most employees. Also, the Stanton Group 6 comparison generally supports the Union claim that it’s \$500 proposal is reasonable and fair. This conclusion is also supported by the fact that this allowance has not increased for many years. I therefore conclude that the Union’s position should be awarded.

D Award

The Union’s proposal set forth at VII, A.1 above is awarded.

**VIII ISSUE 8 - INVESTIGATOR PAY - SHALL SUPPLEMENTAL PAY PROVISIONS
FOR INVESTIGATORS PAY BE INCLUDED IN THE CONTRACT - NEW**

A Proposals of the Parties

1. LELS Proposal

Article XXII WAGES

22.2 An investigator shall receive supplemental pay in the amount of one

hundred eighty dollars (\$180) per month in addition to the above rates.

2. City's Proposal

No addition to the contract.

B Supporting Argument of the Parties

1 LELS Supporting Argument

The Union argues that this benefit is not new since a \$115 wage supplement was agreed to for investigators in 1989. This supplement by addendum has not been placed in the contract or increased since 1989. The Union argues that since there has been no increase since 1989 the amount of the supplement should be increased to \$180.00 to bring it into line with comparable cities.

2 City's Supporting Arguments

The City argues that there is really no reason to increase the supplement since investigators really do not work under conditions that justify any greater differential from other officers' pay.

C Discussion and Conclusion

As with the clothing allowance, I see no reason that the wage supplement for investigation should not be placed in the contract. However, it is less clear here, than in regard to clothing allowances where prices have gone up, that the mere passage of time merits an increase in the supplement. However, since the supplement has not been increased for 12 years, it is now a much smaller percentage of the total pay than it was in 1989. Also, it is much lower than the supplements of many comparable cities, which pay supplements of between \$175.0 and \$225.00 per month. Therefore, I conclude that the Union's proposal is justified.

D Award

The Union's proposal as set forth at VIII, A.,1. above, is awarded.

IX ISSUE 9 - SHIFT PREMIUM - SHALL SHIFT PREMIUM PROVISIONS BE INCLUDED IN THE CONTRACT - NEW

A Proposals of the Parties

1 LELS Proposal

Article XXII Wages

22.3 Employees working between the hours of 6 p.m. and 6 a.m. shall receive forty cents (\$0.40) for each hour worked

2 City's Proposal

No change in contract.

B Supporting Arguments of the Parties

1 LELS Supporting Arguments

The Union argues that the supplement proposed here will create incentives for officers to work undesirable shifts, that other city employees get a similar benefit when they work undesirable hours such as a weekend and holidays, and that officers in other metro cities receive the same benefit.

2 City's Supporting Argument

The City estimates that this provision would cost \$3,960 per year. This represents a not insignificant expense for which there is no justification according to the City. Shifts are bid now, and the City's experience is that some officers want the night shifts. Also, the City points out that there is no actual similar shift differential paid to other City employees, and that almost no

Stanton Group 6 cities have such a benefit.

C Discussion and Conclusion

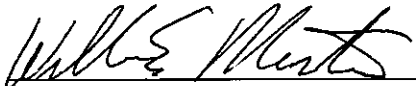
While there is some support for the Union's argument that these hours are undesirable to some, it was not demonstrated that they are undesirable to all. Further, the record shows that the benefit is rare in comparable cities, and internally. As a new benefit, subject to the convincing evidence of a clear need test, I conclude that this proposal should not be awarded in Interest Arbitration but should be left to the future negotiations of the parties.

D Award

The Union's proposal is not awarded.

**X ISSUE 10 - [THIS ISSUE WAS REMOVED FROM IMPASSE, BY THE
AGREEMENT OF THE PARTIES.]**

Dated: September 10, 2001



William E. Martin
Arbitrator