



PUNCH IN

The Greater Minnesota Labor and Employment Bulletin

Punched In: The Greater Minnesota Labor and Employment Bulletin is published by the Coalition of Greater Minnesota Cities Labor and Employee Relations Committee (Labor Committee) for CGMC members interested in relevant and timely information on labor and employment issues.

August 2008

Interest Arbitration Update: Award Summary

To provide cities with recent trends in labor arbitrations, the following is a summary of interest arbitration awards on general wage increases for greater Minnesota cities' law enforcement bargaining units, through August 2008:

CBA Year	# of Awards	Union Final Position (Avg.)	City Final Position (Avg.)	Arbitrator Award (Avg.)	Arbitrator Award (Range)
2007	8*	4.56%	2.31%	3.02%	2.50% – 4.00%
2008	4**	5.50%	3.20%	3.63%	3.00% – 5.00%
2009	3***	4.17%	3.00%	3.33%	3.00% – 4.00%

*These cities include the following: Alexandria, Bemidji (2), Blue Earth, Duluth, Fergus Falls, Marshall, and Winona.

**These cities include Bemidji (2), Duluth, and Saint James.

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Cities should only use this summary as a general indication of the wage increase an arbitrator may award should a city proceed to interest arbitration with a law enforcement bargaining unit.

Committee Update

Labor Committee Incorporated into Full CGMC

At the CGMC Summer Conference in Mankato, the full membership of the CGMC approved incorporating the Labor Committee into the CGMC as all other committees. Therefore, effective September 1, 2008, the Labor Committee will be funded through the general CGMC dues assessment, and all CGMC cities will have access to committee services. This will allow the Labor Committee to coordinate and communicate with over three times as many cities!

League of Minnesota Cities' Model Labor Contract

Staff at Flaherty & Hood, P.A. recently completed its review of the League of Minnesota Cities' draft model contract and provided comments to the LMC on behalf of the Labor Committee. After considering these comments, it is anticipated that the LMC will provide the model contract to cities for use in negotiations with your unions.

(Committee Update, continued)

Thank You to Founding Members

The Labor Committee was established in September of 2004. Since then, committee membership has more than doubled in size. Thank you to all Labor Committee member cities who helped to grow the program and advocated for its incorporation into the full CGMC!

Settlements on Wages and Health Insurance

The Labor Committee continually compiles data on settlements on wages and health insurance for greater Minnesota cities. The most recent data is below:

Settlements of Greater Minnesota Cities: General Wage Increases							
	Bargaining Units						
	Police	Police Sergeants/Supv.	Fire	Public Works	Clerical	Professional	Non Union
2007 AVE.	3.00%	3.12%	2.86%	2.97%	2.92%	2.85%	2.90%
Sample Size	54	26	16	34	25	19	25
2008 AVE.	3.06%	3.01%	2.93%	2.93%	2.84%	2.86%	2.97%
Sample Size	35	17	10	22	15	10	14
2009 AVE.	3.06%	3.14%	3.06%	3.00%	2.94%	2.94%	2.88%
Sample Size	13	6	4	11	8	4	7

Settlements of Greater Minnesota Cities: Health Insurance (Lowest Cost Plan)								
	City Contribution				Employee Contribution			
	Single		Family		Single		Family	
	%	\$	%	\$	%	\$	%	\$
2007 AVE.	94.38%	\$432.22	80.30%	\$823.95	6.15%	\$24.99	19.70%	\$209.64
Sample Size	42	39	39	42	42	35	39	38
2008 AVE.	93.46%	\$433.76	80.51%	\$842.11	6.07%	\$22.88	20.49%	\$232.23
Sample Size	29	25	26	25	29	23	26	22
2009 AVE.	89.00%	\$568.25	83.67%	\$740.00	9.67%	\$22.50	19%	\$0
Sample Size	5	4	5	5	5	1	5	0

Pay Equity Reporting

The following CGMC cities must submit their pay equity compliance report to the State of Minnesota by January 31 using compensation data as of December 31 of 2008.

- Alexandria
- Austin
- Bagley
- Bemidji
- Benson
- Crookston
- Detroit Lakes
- East Grand Forks
- Elbow Lake
- Fergus Falls
- Gilbert
- Goodview
- Grand Rapids
- Janesville
- Luverne
- Marshall
- Olivia
- Perham
- Red Wing
- Renville
- Rochester
- Roseau
- Rushford
- St. Charles
- St. Joseph
- St. Peter
- Warren
- Worthington

Legal Corner: Subcontracting Bargaining Unit Work

If a city is considering contracting out services normally performed by bargaining unit employees to non-City employees (subcontracting), then it must consider what, if anything, it must negotiate with an exclusive representative related to the subcontracting.

Right to Subcontract

Generally, cities have the right to subcontract without meeting and negotiating about such a decision with the exclusive representative, because the decision is likely considered an inherent management right under the Public Employment Labor Relations Act (Minn. Stat. c. 179A). This right can be bolstered by a collective bargaining agreement (CBA) expressly providing this right. Arbitrators often rely on the following analysis if the decision to subcontract is challenged through a grievance procedure in a labor agreement and there is no language relating to subcontracting in the CBA:

In the absence of contractual language relating to contracting out of work, the general arbitration rule is that management has the right to contract out work as long as the action is performed in good faith, it represents a reasonable business decision, it does not result in subversion of the labor agreement, and it does not have the effect of seriously weakening the bargaining unit or important parts of it. This general right to contract out may be expanded or restricted by specific contractual language. *Elkouri and Elkouri, How Arbitration Works* 746 (6th Ed. 2003).

In applying this “balancing test,” an arbitrator would likely examine the following factors:

- Past practice
- Justification
- Effect on the union or bargaining unit
- Effect on unit employees
- Type of work involved
- Availability of properly qualified employees
- Availability of equipment and facilities
- Regularity of subcontracting
- Duration of subcontracted work
- Unusual circumstances involved
- History of negotiations on the right to subcontract
Id., at 748 – 53.

The City should take this analysis into account when making the decision to subcontract services to ensure the decision will be upheld if the decision is challenged by the exclusive representative.

Meet and Negotiate over Effects

The Minnesota Supreme Court holds that “[a]lthough the decision to contract out may be an inherent managerial right, the effects of that decision may still be subject to negotiation and arbitration.” *I.S.D. No. 88, New Ulm v. School Service Employees Union Local 284*, 503 N.W.2d 104, 107 (Minn. 1993). For example, any potential effects (e.g., effect on terms in a labor contract) from subcontracting on seniority, hours of employment, or fringe benefits for a bargaining unit employee(s) may have to be negotiated with an exclusive representative. Based on this requirement, a city must give a union “sufficient notice” of the decision to subcontract. *General Drivers Union Local 346 v. I.S.D. No. 704, Proctor School Board*, 283 N.W.2d 524, 527 – 8 (Minn. 1979).

To effectively execute subcontracting of services involving bargaining unit employees and increase the likelihood of success if the decision is challenged, a city should ensure that it (1) has collective bargaining agreement language providing it expressly with that right; and (2) provides sufficient notice to the exclusive representative upon making the decision to subcontract.

Questions? If you have questions or need additional information or consultation, please contact Chris Hood at cmhood@flaherty-hood.com or Brandon Fitzsimmons at bmfitzsimmons@flaherty-hood.com. You can also reach Chris and Brandon at 651-225-8840.