



PUNCH IN

The Greater Minnesota Labor and Employment Bulletin

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.

April 2016

Data for Negotiations

Here is data relevant to cities in establishing compensation packages for employees in 2016 and beyond.

Greater Minnesota Cities

Settlements

Summaries of settlements on wage increases and health insurance contributions are shown in the tables on **page 2**.

Interest Arbitration Awards

Greater Minnesota Cities

General Wage increases for Law Enforcement in Greater Minnesota Cities 2014-2016					
CBA Year	# of Awards	Union Position (Avg.)	City Position (Avg.)	Arbitrator Award Avg.	Arbitrator Award Range
2014	2*	2.25%	1.75%	2.00%	1.75-2.25%
2015	3**	2.50%	1.83%	2.08%	1.75-2.50%
2016	1***	3.00%	2.00%	2.25%	2-.3%

*Involved cities: Canby & Eveleth

**Involved cities: Canby, Eveleth & Hutchinson

***Involved city: Hutchinson

All Local Government

General Wage Increases for Law Enforcement in All Local Government Units in Minnesota 2015-2017					
CBA Year	# of Awards	Union Position (Avg.)	Employer Position (Avg.)	Arbitrator Award Avg.	Arbitrator Award Range
2015	20	2.93%	1.99%	2.22%	0% - 5%
2016	10	2.92%	1.81%	2.22%	0% - 5%
2017	2	3.80%	2.55%	2.55%	2.50%-5.10%

Labor Committee News

Labor and Employee Relations Seminars Scheduled

The CGMC Labor and Employee Relations Committee will hold its annual labor and employee relations seminars from **10:00 a.m. to 4:00 p.m. on:**

Thursday, June 2, 2016 in Fergus Falls
Wednesday, June 8, 2016 in Austin

The seminars will provide practical and legal solutions for providing services and managing employees in local government. Seminar topics include:

- Prepare for increased unfair labor practices claims under the new PERB process
- Health insurance trends
- Total rewards for public employees
- Updates on settlements, arbitrations and the legislature
- Mock labor contract mediation

To register, please fill out this [registration form](#) and submit it today as space is limited. You can send the registration form by fax (651-225-9088), email (RSVP@flaherty-hood.com) or mail (Flaherty & Hood, P.A., 525 Park St., Suite 470, St. Paul, MN 55103).

CGMC Testifies on PERB Rules

In February 2016, Waite Park City Administrator Shaunna Johnson, co-chair of the CGMC Labor and Employee Relations Committee, testified before an Administrative Law Judge on behalf of the CGMC on the deficiencies and recommendations to correct the deficiencies of proposed rules that will govern the procedures and operations before the newly established Minnesota Public Employment Relations Board (PERB).

General Wage Increase Averages and Ranges 2015-2017										
	Bargaining Units									
	Police		Fire		Clerical		Professional		Non Union	
2015	2.19%		2.20%		2.28%		2.50%		2.35%	
Sample Size	61		10		24		18		29	
Range	#	%	#	%	#	%	#	%	#	%
0%	1	1.67%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
.01-.99%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
1.00-1.99%	5	8.33%	0	0.00%	1	4.17%	0	0.00%	1	3.45%
2.00-2.99%	48	80.00%	10	100.00%	20	83.33%	13	72.22%	22	75.86%
3.00%+	6	10.00%	0	0.00%	3	12.50%	5	27.78%	6	20.69%
2016	2.47%		2.25%		2.33%		2.33%		2.36%	
Sample Size	54		6		15		10		20	
Range	#	%	#	%	#	%	#	%	#	%
0%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
.01-.99%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
1.00-1.99%	1	1.89%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2.00-2.99%	44	83.02%	6	100.00%	14	93.33%	8	80.00%	18	90.00%
3.00%+	8	15.09%	0	0.00%	1	6.67%	2	20.00%	2	10.00%
2017	2.60%		2.38%		2.28%		2.56%		2.44%	
Sample Size	27		4		8		8		9	
Range	#	%	#	%	#	%	#	%	#	%
0%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
.01-.99%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
1.00-1.99%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
2.00-2.99%	20	74.07%	4	100.00%	7	87.50%	5	62.50%	8	88.89%
3.00%+	7	25.93%	0	0.00%	1	12.50%	3	37.50%	1	11.11%

Health Insurance (Highest Cost Plan)Averages 2015-2016										
	Monthly City Contribution				Monthly Employee Contribution				HRA/HSA/VEBA	
	Single		Family		Single		Family		Single	Family
	%	\$	%	\$	%	\$	%	\$	\$	\$
2015	94.96%	\$540.25	71.30%	\$1,072.16	5.24%	\$43.82	26.30%	\$408.69	\$1,103.23	\$2,266.86
Sample Size	27	30	25	30	26	25	25	25	19	18
2016	94.38%	\$652.65	68.40%	\$1,325.66	6.43%	\$43.11	31.56%	\$380.50	\$1,560.00	\$3,240.00
Sample Size	8	11	6	12	7	10	6	10	5	5

CGMC Testifies on PERB Rules (cont.)

The rules will govern the resolution of unfair labor practices cases, which are charges brought by employees, unions or employers related to violations of Minnesota’s Public Employment Labor Relations Act. The PERB process will likely result in substantially more unfair labor practices charges against public employers with a more nuanced process and increased legal and financial liability. Johnson’s testimony was an attempt by CGMC to mitigate these negative impacts on public employers. The rules will be adopted before PERB’s authority to resolve unfair labor practice cases begins July 1.

Economic and Government Data

Minnesota Government

Budget

- FY 2016-2017 (July 1, 2015–June 30, 2017) \$900 million balance, \$306 (25.5%)million lower than projected in November 2015's *Budget and Economic Forecast*, due to reductions in expected tax revenue collections, partially offset by lower expenditure estimates
- Net revenues are about \$11 million less (.5%) than the February 2016 forecast
 - Calendar years 2015 and 2016 LGA payments from this budget
 - LGA appropriation is:
 - 2015: \$516, 898,012 (\$9.3 million, 1.83%) increase
 - 2016+: \$519,398,012 (\$2.5 million, .48% increase)

- 2016 session expected to include bonding bill, tax bill, and transportation funding

Revenue & Economic Update
 April 2016, Minnesota Management and Budget (MMB); *Budget and Economic Forecast* February 2016, MMB

Unionized State Employees’ Labor Agreements

- Wages
 - FY 2014: 3%
 - FY 2015: 3%
- Tentative Agreements with two largest unions (30,000+ employees) for FY2016 (July 2015-June2016) and FY2017 (July 2016-June 2017)
 - Wages
 - FY 2016: 2.5%
 - FY 2017: 2.5%
 - Health Insurance
 - No change to premium share
 - Employer pays 95% of employee premiums and the employee pays 5%. Employer pays 85% of family premiums and the employee pays 15%
 - Premium increases projected: 7.4% in 2016 and 6.6% in 2017
 - Other items
 - Benefit and language changes benefitting employees related to vacation, compensatory time, deferred compensation, severance pay, and discipline
 - Unions ratified agreement, but Legislative Coordinating Commission-Subcommittee on Employee Relations neither accepted nor rejected labor contract. By law, the contract automatically went into effect. Legislature must ratify the contract. If it does not, the old contract will come back in effect.

Public Employees Retirement Association (PERA): Employer Contribution Increases

Year	Police & Fire Plan		Coordinated Plan	
	Rate	% Pts. Inc.	Rate	% Pts. Inc.
2006	10.50%	1.20%	6.00%	0.47%
2007	11.70%	1.20%	6.25%	0.25%
2008	12.90%	1.20%	6.50%	0.25%
2009	14.10%	1.20%	6.75%	0.25%
2010	0.00%	0.00%	7.00%	0.25%
2011	14.40%	0.30%	7.25%	0.25%
2014	15.30%	0.90%	0.00%	0.00%
2015	16.20%	0.90%	7.50%	0.25%

- PERA is considering options to address funding deficiency in General Plan, which General Plan, which may include increasing employer and/or employee contributions. But, no such increase would likely take effect until 2018, at the earliest.

Federal Government Employees

- Pay frozen in 2011, 2012 & 2013
- Pay increases
 - 1% in FY 2014 (Oct. 2013-Sept. 2014)
 - 1% in FY 2015 (Oct. 2014-Sept. 2015)
 - 1% plus up to additional .3% in FY 2016 (Oct. 2015-Sept. 2016)
- President Obama proposed 1.6% pay increase in FY 2017 budget (Oct. 2016-Sept. 2017)

Economy U.S.

- Consumer Price Index (CPI) (i.e., change in prices):
 - 2014 to 2015 (as of Dec.): - .08%
 - 2015 to 2016 (as of Mar.): + .08%

Urban Wage Earners and Clerical Workers, Midwest Cities < 50,000, U.S.
 Department of Labor.

Economic and Government Data (cont.)

- Projected
 - 2016: + 1.0%
 - 2017: + 2.2%

Revenue & Economic Update April 2016, MMB

- Present
 - Gross Domestic Product (GDP)
(i.e., economy)
 - General
 - Average monthly job growth driven by strong gains in the construction and service sectors is identical to the average for the past four years. The number of job openings is near its highest point in 14 years, more workers are being drawn into the labor force, and the unemployment rate has fallen to near eight-year lows. Steady job gains and modest inflation appear to be supporting solid real disposable income growth and, in turn, moderate retail sales, vehicle sales, and home buying activity. Oil prices have rallied to above \$40 per barrel in recent weeks, which has helped strengthen commodity-linked currencies, such as the Canadian dollar, against the US dollar. These developments have helped allay concerns about the durability of the expansion amid fresh signs of a global economic slowdown and subsequent financial market turmoil
 - Manufacturing and foreign trade are still struggling, hurt by a strong U.S. dollar, weak global growth, and the collapse in energy prices. These same factors are weighing on business investment, as new orders and shipments for durable goods continued to trend lower to start the year.

Revenue & Economic Update April 2016, MMB

- Projections
 - GDP Growth
 - 2016: + 2.1%
 - 2017: + 2.8%

Revenue & Economic Update April 2016, MMB; *Budget and Economic Forecast* November 2015, MMB

Minnesota

- Current
 - Minnesota's economy has felt the adverse effects of falling commodity prices, the stronger US dollar, and weak global growth. A sharp drop in global iron ore prices has led to significant cutbacks in the state's important mining sector. Agricultural and manufacturing activity has also struggled. Ample supplies, a strong U.S. dollar, and slow growth in global demand have kept prices for corn and soybeans low, hurting the profits of Minnesota farmers. Likewise, the surging value of the dollar against the currencies of Minnesota's largest trading partners—including Canada and Mexico—has hurt demand for the state's manufactured exports. As a result, the pace of overall job growth in Minnesota slowed during the second half of 2015.
 - Nonetheless, Minnesota is weathering the recent global slowdown and slide in commodity prices reasonably well, a reflection of its large and diverse economic base. Job growth has remained widespread, with recent gains in education and health services, retail trade, and financial activities. Improved homebuilding activity has also meant greater need for construction tradespeople like carpenters and roofers. That broad based job growth has helped quickly absorb the underemployed and unemployed, and push down the state's jobless rate in December to 3.5 percent, its lowest mark since the early 2000s and the lowest among states with a major metropolitan area. With the excess supply of workers rapidly diminishing, a tighter labor market is leading to some long-awaited wage acceleration.
- Projected
 - Minnesota's expansion to continue over the next several years, but at a generally slower pace. It appears that Minnesota is at or near its full employment potential, where job growth is becoming increasingly constrained by the impact of an aging population on the market supply of labor. As a result, both employment and total wage income growth are expected to remain modest in 2016 and 2017, with the average annual wage slowly accelerating throughout much of the forecast horizon. The forecast expects small improvements in household formation, labor force growth, and labor productivity.

Budget and Economic Forecast February 2016, MMB

Legal Corner

Reassigning Work Outside a Bargaining Unit

For operational and budgetary reasons, cities may consider utilizing employees not included in a bargaining unit or subcontracting to do work otherwise normally done by employees in a bargaining unit or similar to such work. Unions may claim that this requires meeting, negotiating, and getting agreement from a union and/or violates the labor contract. Here is the analysis on this issue.

Management Right

Assigning work, subcontracting, and creating, modifying and eliminating positions are generally management rights under the Public Employment Labor Relations Act (Minn. Stat. §§ 179A.01-.25) (PELRA). PELRA provides that a public employer is not required to meet and negotiate with an exclusive representative (i.e., union) of impacted employees over matters of inherent managerial policy. The matters of inherent managerial policy include, but are not limited to, the following: “such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organization structure, selection of personnel, and direction and number of personnel.”

Minn. Stat. § 179A.07, subd. 1.

A city’s rights may either be (1) bolstered by; or (2) prohibited, restricted or waived through collective bargaining agreement language. A city should determine whether any contract language does any of these..

Even if a city has strong contract language related to assigning work to nonunion employees or subcontracting, a city may still be still limited in exercising such a management right as summarized by an arbitrator in a Minnesota arbitration award relying on the main labor arbitration treatise:

[M]any arbitrators are reluctant to uphold arbitrary, capricious, or bad faith managerial actions which adversely affect bargaining unit employees. Even where the agreement expressly states a right

in management, expressly gives it discretion as to a matter, or expressly makes it the “sole judge” of a matter, management’s action must not be arbitrary, capricious, or taken in bad faith.

The seventh edition of Black’s Law Dictionary defines arbitrary and capricious as follows:

Arbitrary - 1. Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures or law. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact.

Capricious – 1. (Of a person) characterized by or guided by unpredictable or impulsive behavior. 2. (Of a decree) contrary to the evidence or established rules of law.⁹

See case [here](#).

Negotiations

In analyzing an inherent managerial right, e.g., subcontracting, the Minnesota Supreme Court opined that:

- “Although the decision to contract out may be an inherent managerial right, the effects [on terms and conditions of employment] of that decision may still be subject to negotiation and arbitration.”
- An employer’s exercise of its management right may be negotiable based on the “balancing of interests” principle described in the section below. Thus, if the “balancing of interests” is in favor of a union, a city would generally be required to meet and negotiate in good faith with a union on a city’s exercise of a management right. If the “balancing of interests” are favor of a city, however, a city may not be required to meet and negotiate in good faith with a union on a city’s exercise of a management right.

I.S.D. No. 88, New Ulm v. School Service Employees Union Local 284, 503 N.W.2d 104, 107 (Minn. 1993).

The Minnesota Supreme Court also holds that: “Jurisdictional questions dealing with the assignment of work to unit members are subjects of mandatory negotiation.” *Foley Educ. Ass’n v. Indep. Sch. Dist. No. 51*, 353 N.W.2d 917, 924 (Minn. 1984).

PELRA provides that a public employer engages in an illegal, unfair labor practice by “refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit.” Minn. Stat. § 179A.13, subd. 2(5). The Minnesota Court of Appeals holds that “A unilateral change by an employer in the terms and conditions of employment is a prima facie violation of the employees’ collective bargaining rights.” *Educ. Minn. – Greenway, Local 1330 v. Indep. Sch. Dist. No. 316*, 673 N.W.2d 843, 849 (Minn. App. 2004), review denied (Minn. Apr. 20, 2004). In this case, a city is not changing any arguable term or condition of employment, and, therefore the requirement to negotiate likely does not apply.

If the requirement to negotiate this issue applied, then a city should determine the arguable and possible applicable labor contract terms effected by assigning bargaining unit-type work or creating a bargaining unit-type position which items may be negotiable.

Balancing of Interests

Though a city may have a right to subcontract work, assign work and create, modify and eliminate positions so long as it complies with the applicable labor contract provisions, an arbitrator or district court would likely require that a city have sufficient grounds to do this as follows if the Union challenges a city’s actions through the agreement’s grievance arbitration process or an unfair labor practice claim in district court:

[I]t is a case of an appropriate balancing of the legitimate interests of management, the bargaining unit employees, and their Union of Employees representative. The managerial interest in efficient allocation of work should not have to stop at the boundaries of a defined bargaining unit. On the other hand, the decision to allocate work to employees outside the bargaining unit should be one made in the honest exercise of business judgment, and not arbitrarily, capriciously, or in bad faith.

Elkouri and Elkouri, *How Arbitration Works* 762 (6th ed. 2003).

Should the Union pursue a grievance and/or unfair labor practice claim in this case, discussed below are

factors that an arbitrator or district court may rely upon to uphold management’s action, along with facts that would support management’s action for the relevant factor:

- A. The quantity of work or the effect on the bargaining unit is minor or de minimis in nature;
 - i. The work was not performed by a non-bargaining unit employee for many hours or many days
 - ii. The work would not have resulted in many compensable hours of work for the bargaining unit employee had they performed such work. The work assignment is a temporary one for an emergency or other special purpose;
- B. The work assignment is a temporary one for an emergency or other special purpose;
 - i. A non-bargaining unit employee was assigned the work for only a short period of time because of an emergency or other special purpose
- C. The work is not covered by the contract;
 - i. The work at issue is not expressly stated in the contract
- D. There has not been a past practice of bargaining unit employees exclusively performing such work or if bargaining unit employees usually perform such work, it is not usually performed during the days or hours in which the non-bargaining unit employee performed the work
- E. The work is experimental;
 - i. A city is determining whether this work should be performed by non-bargaining unit employees based on how effectively and efficiently the work was done by a non-bargaining unit employee
- F. There is a change in the character of the work;
 - i. The work that needs to be done has changed or requires different work be performed

G. Automation or a technological change is involved; and

- i. Such changes no longer require that unit employees exclusively perform such work

H. The transfer was caused by a reorganization or change in work methodology or processes

Elkouri and Elkouri, *How Arbitration Works* 758-759 (6th ed. 2003).

Should a union challenge the employer's actions, a union would likely seek a remedy from an arbitrator or district court judge that (1) a city cease and desist from taking these actions; and (2) the employee receives back pay for the hours in which such employee would have worked for a city, but did not due to these actions.

Recommendations

To deter a union from challenging the individuals not in the bargaining unit performing the work at issue, a city should do the following:

1. Compile and retain in one file relevant documents related to these individuals
2. Analyze and document background for the option a city intends to pursue
 - A. Relevant services or functions performed
 - B. Option(s) for changes to such services or functions
 - C. Reasons for changes
 - D. Number and names of employees and positions impacted
 - E. Expected savings (\$) and efficiencies (non-\$) from options
 - F. Process, including timeline, to implement
3. Discuss the issue with City decision-makers
4. Either
 - A. Take necessary City actions to exercise final option; and/or

B. Discuss with a union an agreement

5. Give notice impacted employees of final decision and negotiate over any effects on the impacted employees.
6. Propose labor contract language expressly establishing a city's right to assign duties, responsibilities, and tasks and avoid language specifying job duties, responsibilities, or tasks in the agreement.

U.S. Supreme Court Upholds Fair Share Fees

The U.S. Supreme Court decided on a 4-4 vote on March 29, 2016, to uphold a federal appeals court ruling that upheld "agency shop" fees" (a.k.a., "fair share fees"). *Friedrichs, et. al. v. California Teachers Association*, No. 14-915. "Agency shop" fees are the portion of full union dues employees in a bargaining unit must pay if they choose not to join the bargaining unit's union.

Plaintiffs in this case argued that such fees should be invalidated under the First Amendment in that such arrangements require employees in a bargaining unit to pay fees to a union even if they object to the union's activities.

Minnesota' Public Employment Relations Act authorizes "fair share fees." Minn. Stat. § 179A.06, subd. 3.

The Plaintiffs filed a Petition for Rehearing requesting that the Court rehear this case after it obtains a full complement of Justices capable of reaching resolution by a five-Justice majority. The Court rarely rehears cases so it is highly unlikely that the case will be reheard by the Court.

Questions? If you have questions or need additional information or consultation, please contact Brandon Fitzsimmons, Chris Hood or Carol Loncar via email at bmfitzsimmons@flaherty-hood.com, cmhood@flaherty-hood.com or clloncar@flaherty-hood.com or by phone at 651-225-8840.