

LEAGUE OF MINNESOTA CITIES
FAQ's relating to Model Contract Language – City Hall Unit

Throughout this document there are endnotes (ⁱ), you can scroll over them for additional information relating to that section. You may click on the endnote to view the text in a larger font. To return to your original place in the document, click on the endnote again and it should bring you back.

References in this key noted as Minn. Stat. are to the Minnesota Statutes. Headings are noted as articles. Areas under the headings are noted as sections.

Q: Why have a written collective bargaining agreement?

A: The public sector labor law (Minn. Stat. Sec. 179A) is generally known as the Public Employment Labor Relations Act (or PELRA for short). This law requires that a city and exclusive representative execute a written contract or memorandum of contract containing the terms of the negotiated agreement and any terms established by law. Minn. Stat. Sec. 179A.20.

Q: Are there any provisions other than the collective bargaining agreement that will apply to the covered employees?

A: Yes. As a general matter, the employer and employee relationship is subject to many statutory requirements. PELRA, wage and hour laws, leave of absence laws, discrimination laws and veterans preference laws are examples of laws that impose duties on cities.

Q: Why does the model language use the term union? We have an association or federation.

A: The terms association or federation may be substituted in the model contract to most accurately reflect the legal status of the exclusive representative.

i MODEL CONTRACT LANGUAGE – CITY HALL UNIT
(Produced by the League of Minnesota Cities in cooperation with
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01/01/20-- THROUGH 12/31/20--

LABOR AGREEMENT

BETWEEN

THE CITY OF _____

AND

(NAME OF UNION)

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iii Article 1. INTRODUCTION

This Agreement, is made and entered into by and between the City of _____, hereinafter referred to as the Employer and _____, Local _____ hereinafter referred to as the Union.

iv Article 2. RECOGNITION

Section 1. The Employer recognizes the Union as the exclusive bargaining representative, under Minnesota Statutes, Section 179A.03, Subdivision 8, as certified by the Bureau of Mediation Services on _____, BMS Case No. _____, and described as:

Insert unit description from BMS unit certification

The parties agree that limited term, temporary and intermittent/casual employees are excluded from the bargaining unit.

Section 2. In the event that the Employer and the Union are unable to agree as to the inclusion or exclusion of a new or modified job class the issue shall be submitted to the Bureau of Mediation for determination.

v Article 3. DEFINITIONS

Section 1. Employee: A member of the exclusively recognized bargaining unit.

Section 2. Employer: The City of _____.

Section 3: Bargaining unit employee: A regular employee in a classified bargaining unit position.

Section 4. Bargaining unit position: A job classification included in the bargaining unit pursuant to Article __ (Recognition) and which is established as an on-going position. A bargaining unit position does not include a position which is created merely to address an overload or emergency situation or is otherwise intended to be limited in duration.

Section 5. Regular employee: An employee who is regularly scheduled for a set number of hours per week. The work he or she performs is of an on-going nature. However nothing in this definition grants a regular employee a vested right to a defined number of hours or continued employment.

Regular Full-time employee: An employee in a classified bargaining unit position who is regularly scheduled to work 40 hours per week and has successfully completed the probationary period.

Regular Part-time employee: An employee in a classified bargaining unit position who is regularly scheduled to work at least 16 hours per week and less than 40 hours per week and has successfully completed the probationary period.

Section 6. Temporary Employee: An employee who is not in a classified bargaining unit position because the employment is limited by duration or a specific project or task not to exceed one year. Temporary employees are not included in the definition of a bargaining unit employee.

Section 7. On-Call/Intermittent: All employees who are not classified as Regular Full-Time, Regular Part-Time or Temporary employees. On-Call/Intermittent employees perform work of a non-continuous or irregular nature where the work schedule cannot be predicted in advance. On-Call/Intermittent employees are not included in the bargaining unit.

Section 8. Days. Except as indicated otherwise in the Agreement, all references to days are calendar days.

vi Article 4 . UNION SECURITY

Section 1. The Union may designate certain employees from the bargaining unit to act as stewards and shall, within five (5) calendar days of such designation, certify to the Employer, in writing, of such choice and the designation of successors to former stewards. The Union shall also certify to the employer a current list of any non-employee business representative(s) upon execution of this agreement.

- A. The Employer agrees to recognize stewards certified by the Union as provided in this section subject to the following stipulations:
 - 1. There shall be no more than _____ stewards.
 - 2. The Employer agrees to allow stewards a reasonable amount of time off for the purpose of bargaining and processing grievances on behalf of Employees with prior notice to the Employer and a determination by the Employer that work needs permit such interruption. The Employer must approve the time off. The stewards shall notify the Employer upon resumption of their work.
- B. A non-employee business representative of the Union, previously certified to the Employer as provided herein may, with the prior approval of the Employer, come on the premises of the Employer for the purpose of bargaining and processing grievances.

Section 2. In recognition of the Union as the exclusive representative:

- A. The Employer shall deduct an amount sufficient to provide the payment of regular dues established by the Union from the wages of all employees authorizing, in writing, such deduction in a form mutually agreed upon by the Employer and Union; and
- B. The Employer shall remit such deduction to the appropriate designated officer of the Union with a list of the names of the employees from whose wages deductions were made; and
- C. The Union shall certify to the Employer, in writing, the current amount of regular dues to be withheld.
- D. Any “fair share” fee deducted shall be withheld in accordance with Minnesota law.

Section 3. The Union agrees to indemnify and hold the Employer harmless against any and all claims, suits, orders or judgments brought or issued against the Employer as a result of action taken by the Employer under all provisions of section 2 of this Article.

vii Article 5. MANAGEMENT RIGHTS

Section 1. The Union recognizes the right and authority of the Employer to operate and manage its affairs in all respects in accordance with its management rights, existing and future laws and regulations of the appropriate authorities. The rights or authority which the Employer has not officially abridged, delegated or modified by this Agreement are retained by the Employer.

Section 2. Except as limited by the specific provisions of this Agreement, the Employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the Employer in all of its various aspects, including but not limited to the right to operate and manage all facilities and equipment; to establish or discontinue functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to schedule working hours and assign overtime; to select, direct and determine the number of personnel; to hire, promote, suspend, discipline or discharge personnel for just cause; to lay off or relieve Employees due to lack of work or other reasons; to make and enforce reasonable rules and regulations; to contract with vendors or others for goods and/or services including the right to subcontract any or all functions performed by members of this bargaining unit, to take any and all actions necessary to carry out the operations of the employer in situations involving a disaster or emergency consistent with the terms and conditions listed in this agreement to the extent practicable, to assign duties, tasks, and jobs, and to perform such

other inherent managerial function as set forth in the Minnesota Public Employee Labor Relations Act of 1971, as amended.

Section 3. The Employer's failure to exercise any right, prerogative, or function hereby reserved to it, or the Employer's exercise of any such right, prerogative, or function in a particular way, shall not be considered a waiver of the Employer's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the express provisions of this Agreement.

Section 4. The parties recognize that all employees covered by this Agreement shall perform the services and duties prescribed by the Employer and shall be governed by Employer rules, policies, regulations, directives and orders, provided that such rules, regulations and orders are not inconsistent with the provisions of this Agreement or state or federal laws. The Employer will provide the Union with notice of any proposed change in any policy applicable to the bargaining unit members at least thirty (30) days prior to implementation of the policy.

viii Article 6. NO STRIKE

Section 1. Neither the Union, its officers or agents, nor any of the Employees covered by this Agreement will engage in, encourage, sanction, support or suggest any strike, slow downs, mass resignations, mass absenteeism, the willful absence from one's position, the stoppage of work or the abstinence in whole or in part of the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation of the rights, privileges or obligations of employment, during the life of this Agreement.

Section 2. In the event that any Employee violates this article, the Union shall immediately notify any such Employee in writing to cease and desist from such action and shall instruct them to immediately return to their normal duties. Any or all Employees who violate any of the provisions of this article may be discharged or otherwise disciplined.

ix Article 7. PART TIME EMPLOYEES

Section 1. Regular part-time employees who are appointed to a position that is regularly scheduled to work at least thirty hours (30) per week shall receive pro-rata sick and vacation based on scheduled hours.

Section 2. Regular part-time employees who are appointed to a position that is regularly scheduled to work less than thirty hours (30) per week shall not receive pro-rata sick and vacation.

Section 3. Regular part-time employees will be eligible for step movement after working 2080 hours for the employer.

Section 4. Regular part time employees will be eligible for health insurance on the same basis as nonunion employees provided that they are eligible for coverage under the applicable insurance policy.

Section 5. Regular part time employees will be eligible for holiday pay in the event that they would normally have been scheduled to work on that day but for the observed holiday as outlined in Article ____.

Section 6. Regular part time employees will not accrue seniority except for purposes of vacation accrual. For purposes of vacation accrual, regular part time employees will be considered to have a year of service after working 2080 hours for the Employer.

x Article 8. INSURANCE

Section 1.

Option A:

All eligible full time employees shall participate in the Employer's insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provisions of both the City's personnel policies and insurance plan documents between the City and insurer. For the term of this agreement, the Employer will contribute toward the premium for health, _____ and _____ insurance on the same basis and subject to the same conditions and restrictions as the basic program for nonunion employees as it may be amended from time to time.

Option B:

All eligible full time employees shall participate in the Employer's insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provisions of both the City's personnel policies and insurance plan documents between the City and insurer. For the term of this agreement, the Employer will contribute up to the sum of \$_____ toward the premium for health insurance.

Option C:

Section 1. All eligible full time employees shall participate in the Employer's insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provisions of both the City's personnel policies and insurance plan documents between the City and insurer.

For the term of this agreement, the Employer will contribute up to the sum of \$_____ toward the single premium for health insurance and up to the sum of \$_____ toward the family premium for health insurance.

Option D:

Section 1. All eligible full time employees shall participate in the Employer's cafeteria insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provisions of both the City's personnel policies and insurance plan documents. For the term of this agreement, the Employer will contribute toward the cafeteria insurance program on the same basis and subject to the same conditions and restrictions as the basic program for nonunion employees as it may be amended from time to time.

Health Care Reform Model Language:

Initial Proposal

The Employer reserves the right to modify the health insurance provisions of this Agreement in the event the Employer is subject to a penalty, tax, fine or increased costs as a result of the requirements of the Affordable Care Act or its related regulations.

(Another Option):

In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to a penalty, tax or fine, the Union and the Employer will meet immediately to bargain over alternative provisions so as comply with the Act and avoid any penalties, taxes or fines for the Employer.

Model Language Proposal for Health Insurance Article To Address Bargaining Obligation Associated with Reduction in Aggregate Value of Benefits, Minn. Stat. § 471.6161:

In the event the Employer modifies group health insurance benefits in order to avoid penalties, taxes, fines or increased costs to meet the requirements of the Affordable Care Act, the Union waives the right to bargain over any resulting reduction in the aggregate value of benefits.

Section 2. For the term of this agreement, the Employer will provide life insurance in the amount of \$_____ for full time eligible employees.

Section 3. All eligible employees may participate in the Employer's pretax premium payment program on the same basis and subject to the same conditions and restrictions as the basic program for nonunion employees as it may be amended from time to time.

^{xi} Article 9. PROBATION

Section 1. Regular full time employees. All employees hired into a regular full time position who are original hires, or rehires following separation, shall serve a probationary period of six (6) consecutive months of active work (which does not include time spent on a leave of absence except as may be required by law). The Employer may extend this probation for a period not to exceed ninety (90) days upon notice to the employee and Union.

Section 2. Regular part time employees. All employees hired into a regular part time position who are original hires, or rehires following separation, shall serve a probationary period of 1,080 hours of active work (which does not include time spent on a leave of absence except as may be required by law and does not include overtime or unscheduled work). The Employer may extend this probation for a period not to exceed five hundred forty (540) hours upon notice to the employee and Union.

Section 3. At any time during the probationary periods noted in Sections 1 and 2, an employee may be terminated at the discretion of the Employer without such discharge being a violation of this Agreement and such termination is not a proper subject for Article ____ (Grievance Procedure).

Section 4. All employees promoted from a bargaining unit classification to a higher job classification within the bargaining unit shall serve a trial period of ninety (90) calendar days. At any time during the trial period, any promoted employee within or outside of the bargaining unit may be returned to the employee's previously held job classification in the bargaining unit, at the discretion of the Employer or the Employee. In this instance, any employee hired into the vacancy may be terminated by the Employer without it being a violation of any of the provisions of this Agreement.

Section 5. Employees shall, during the probationary period, accumulate paid sick and vacation leave as provided by Articles ____ and _____. Employees may take leaves of absence during the probationary period at the sole discretion of the Employer.

xii Article 10. GRIEVANCE PROCEDURE

Section 1. Definition of a Grievance. A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.

Section 2. Processing of a Grievance. It is recognized and accepted by the Union and the Employer that the processing of grievances as hereinafter provided is limited by the job duties and responsibilities of the steward and grievant employee(s) and shall therefore be accomplished during normal working hours only when consistent with such employee duties and responsibilities. The aggrieved employee(s) and the steward representative shall be allowed a reasonable amount of time without pay, for the investigation or presentation of grievances during normal working hours provided the aggrieved employee(s) and the steward have previously notified and received approval from their

designated supervisor where the designated supervisor has determined that such absence is reasonable and would not be detrimental to the work programs of the Employer. The designated supervisor will be notified when the steward or grievant employee(s) returns to the work station and resumes duties.

Section 3. Procedure.

Option A:

Grievances, as defined by Section 1, shall be resolved in conformance with the following procedure:

Step 1. An employee claiming a violation concerning the interpretation or application of this Agreement shall, within ten (10) calendar days after the first occurrence of the event constituting such alleged violation, sign and present such grievance in writing to the employee's direct supervisor as designated by the Employer. The Employer designated Step 1 representative must receive the grievance. The Employer designated Step 1 representative will discuss the matter with the grievant and Union representative and give an answer to such Step 1 grievance to the Union representative within ten (10) calendar days after receipt.

A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, the remedy requested, shall be signed by the grievant and shall be appealed to Step 2 within ten (10) calendar days after the Employer-designated representative's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.

Step 2. If appealed to Step 2, the written grievance shall be presented by the Union and discussed with the Employer designated Step 2 representative. The Employer designated Step 2 representative must receive the grievance. The Employer-designated representative shall give the Union representative the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance.

A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the Employer-

designated representative's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the Union within ten (10) calendar days shall be considered waived.

Step 3. If appealed, the written grievance shall be presented by the Union and discussed with the Employer-designated Step 3 representative. The Employer designated Step 3 representative must receive the grievance. The Employer-designated representative shall give the Union representative the Employer's answer in writing within ten (10) calendar days following the Employer-designated representative's final answer in Step 3.

Any grievance not appealed in writing to Step 4 by the Union within ten (10) calendar days after receipt of such Step 3 grievance final answer shall be considered waived. A grievance not resolved in Step 3 may be appealed to Step 4 within ten (10) calendar days following the Employer-designated representative's final answer in Step 3.

Step 4. The Union shall notify the Employer of a grievance unresolved in Step 3 and appealed to Step 4 in writing within ten (10) calendar days following the Employer-designated representative's final answer in Step 3. The Union shall notify the Bureau of Mediation Services within ten (10) calendar days of the notice of appeal to the Employer that the Union is submitting the matter to arbitration and the Union shall request that the Bureau of Mediation Services provide the parties with a list of arbitrators. The selection of an arbitrator shall be made in accordance with the rules and regulations as established by the Bureau of Mediation Services. The Union must contact the Employer within ten (10) calendar days of the date that the Bureau of Mediation Services has mailed the parties a list of arbitrators in order to strike arbitrators or notify the Employer of an objection to the list of arbitrators. The Employer will have a similar obligation to the Union to be prepared to strike arbitrators or notify the Union of an objection to the list of arbitrators. The matter will be then be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act.

Option B:

Grievances, as defined by Section 1, shall be resolved in conformance with the following procedure:

Step 1. An employee claiming a violation concerning the interpretation or application of this Agreement shall, within ten (10) calendar days after the first occurrence of the event constituting such alleged violation, present such grievance to the department head or designee. The department head or designee will discuss the matter with the grievant and Union representative and give an answer to such Step 1 grievance to the Union representative within ten (10) calendar days after receipt.

A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, the remedy requested, and shall be appealed to Step 2 within ten (10) calendar days after the department head or designee's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.

Step 2. If appealed to Step 2, the written grievance shall be presented by the Union and discussed with the City Administrator or designee. The City Administrator or designee shall give the Union representative the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance.

A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the City Administrator or designee's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the Union within ten (10) calendar days shall be considered waived.

Step 3. The Union shall notify the Employer of a grievance unresolved in Step 2 and appealed to Step 3 in writing within ten (10) calendar days following the City Administrator or designee's final answer in Step 2. The Union shall notify the Bureau of Mediation Services within ten (10) calendar days of the notice of appeal to the Employer that the Union is submitting the matter to arbitration and the Union shall request that the Bureau of Mediation Services provide the parties with a list of arbitrators. The selection of an arbitrator shall be made in accordance with the rules and regulations as established by the Bureau of Mediation Services. The Union must contact

the Employer within ten (10) calendar days of the date that the Bureau of Mediation Services has mailed the parties a list of arbitrators in order to strike arbitrators or notify the Employer of an objection to the list of arbitrators. The Employer will have a similar obligation to the Union to be prepared to strike arbitrators or notify the Union of an objection to the list of arbitrators. The matter will be then be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act.

Section 4. Arbitrator's Authority.

- A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.
- B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented. If the grievance is covered by law or statute, or not covered by the express provisions of this Agreement, the arbitrator shall refer the grievance back to the parties without decision or recommendation.
- C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the Employer and the Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be shared equally.

Section 5. Waiver. If a grievance does not comply with any of the procedural requirements in Section 3, it shall be considered "waived." If a grievance is not appealed in conformance with any of the procedural requirements in Section 3 or any agreed waiver of the requirements thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each

step may be extended by mutual written agreement of the Employer and the Union at each step. In addition, the Employer and Union may mutually agree to extend the time lines and mediate the grievance following the Step 3 final answer from the Employer prior to appealing the matter to Step 4.

Section 6. Class action grievances are not permitted pursuant to this collective bargaining agreement. Grievances must personally affect the named grievant(s).

Section 7. Choice of Remedy. It is specifically understood that any matters governed by statutory or regulatory provisions, except as expressly provided for in this Agreement, shall not be considered grievances under this agreement. In the event that more than one procedure is available for resolution of a dispute arising from any provisions covered by this Agreement, the aggrieved employee(s) shall be limited to one procedure through which remedy may be sought. If the aggrieved employee(s) utilizes a procedure other than the grievance procedure herein, then the employee is precluded from appealing under this procedure. If the employee utilizes this procedure, then the employee is precluded from appealing under another procedure. Employees may use both this grievance procedure and a statutory procedure to the extent that it is required by state or federal law.

xiii Article 11. DISCIPLINE

Section 1. For the purpose of this Article, an employee shall be any regular employee having successfully completed the employee's probationary period.

Section 2. The Employer will discipline employees for just cause only. Discipline does not need to be progressive.

Section 3. Suspensions, demotions, or discharges will be in written form.

Section 4. Written reprimands and notices of suspension shall be read and acknowledged by signature of the Employee.

Section 5. Grievances relating to a suspension or discharge shall be initiated by the Union at Step 2 of the grievance procedure.

Section 6. Oral reprimands are not subject to the grievance procedure.

xiv Article 12. HOLIDAYS

Section 1. The following will be recognized as paid holidays for full time regular employees:

New Years Day	January 1
Martin Luther King Day	Third Monday in January
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11th
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

Section 2. In the event that any of the holidays listed above fall on a Saturday, the Employer will observe the holiday on the prior Friday. In the event that any of the holidays listed above fall on a Sunday, the Employer will observe the holiday on the following Monday. This section will not apply to individuals regularly scheduled to work weekends to the extent that the holiday falls on a regular work day.

Section 3. Regular full time employees in active status will receive payment for the holiday regardless of whether the holiday is worked. This payment will be based on the number of hours per day (exclusive of overtime) that the employee is scheduled to work during the pay period in question. Employees on a leave of absence (not in active status) other than vacation or sick leave on both the day prior to and following the holiday will not receive holiday pay except as required by law. This holiday payment will not be considered hours of work for purposes of overtime eligibility.

Section 4. Regular employees required to work on the holidays listed in Section 1 will receive regular pay for all hours actually worked in addition to the holiday pay listed in Section 3 (for full time regular employees) or Article __, Section __ (for eligible part time employees).

xv Article 13. VACATION

Option A:

Section 1. All eligible employees shall be offered participation in the Employer's vacation benefit program as defined by the personnel policies as they may be amended from time to time.

Option B:

Section 1. All full time regular employees will accrue vacation according to the following schedule:

Insert schedule from city personnel policies

Section 2. Years of service shall mean consecutive employment as a full-time employee or 2,080 hours of service as an eligible part time employee. The Employer, in its discretion, may credit rehired employees or newly hired but experienced employees with additional years of experience.

Section 3. Vacation time will be charged to the employee's vacation bank based on the employee's normal scheduled work day for that pay period exclusive of overtime.

Section 4. Vacations shall only be taken after the time has been earned.

Section 5. When a paid holiday falls during an employee's vacation period, the employee shall not be charged a day of paid vacation.

Section 6. Employees can carry over two (2) times their annual accrual. Employees at the maximum accrual will not accrue additional vacation.

Section 7. The Employer will consider vacation requests based on the needs of the City as determined by the department head. Employees requesting vacation must provide at least one week advance notice for the City to consider the request. The City may waive this requirement at its discretion.

Section 8. Employees separating from employment in good standing shall be compensated at their regular rate of pay for all hours of accrued and unused vacation as of the date of separation. For purposes of this section, good standing means that an employee is resigning with two weeks advance notice and not in anticipation of discharge. The Employer may authorize exceptions to these requirements in its discretion.

Option C:

Section 7. The Employer will allow employees to sign up for requests for vacation times annually. In the event more than one employee requests the same date, the City will consider seniority as a deciding factor for up to two weeks of vacation (taken in blocks of at least one week). The Employer may limit vacations including limitation on the number of individuals who can be on vacation at any given time to meet the needs of the City.

^{xvi} **Article 14. SICK LEAVE**

Option A:

Section 1. All eligible employees shall be offered participation in the Employer's sick leave program as defined by the personnel policies as they may be amended from time to time.

Option B:

Section 1. All full time regular employees will accrue sick leave at the rate of _____ per _____.

Insert accrual from city personnel policies

Section 2. Sick leave may only be used for absences due to illness, injury, disability, exposure to contagious disease (where such exposure would endanger the health of others the employee comes into contact with), or the necessity of medical or dental care of the employee, spouse or children under age 18 (or age 20 if still attending secondary school).

Section 3. The Employer may require a doctor's certificate for any absence of three (3) or more consecutive days, for absences that follow a pattern, are in excess of five (5) days per year, precede or follow a holiday or otherwise where the Employer suspects potential abuse.

Section 4. Use or claiming the need to use sick leave for a purpose not authorized in this Article will be cause for discipline.

Section 5. Employees can carry over two (2) times their annual accrual. Employees at the maximum accrual will not accrue additional sick leave.

^{xvii}**Article 15. HOURS OF WORK**

Section 1. This Article is intended only to define the normal hours of work and normal scheduling and to provide the basis for the calculation of overtime or other premium pay. Nothing herein shall be construed as a guarantee of hours of work per day or per week.

Section 2. Work shifts, work breaks, staffing schedules and the assignment of employees thereto shall be established by the Employer.

Section 3. Employees will receive overtime compensation for hours actually worked in excess of forty (40) per week at time and one-half the base rate of pay. The beginning of the week for overtime purposes will be established by the Employer.

Section 4. The assignment of overtime shall be at the discretion of the Employer. Employees must receive prior authorization from the employee's immediate supervisor before working any overtime, except in cases of emergency.

Section 5. Employees shall be required to work overtime or holidays when assigned unless excused by the Employer.

Section 6. Neither the base pay rate specified in Appendix A nor overtime pay shall be paid more than once for the same hours worked under any provisions of this agreement.

Section 7. Employees eligible for overtime payments may receive compensatory time off in lieu of the overtime payment at the sole discretion of the Employer. The Employer may require an employee to utilize accrued and unused compensatory time off. In no event may any employee earn in excess of eighty (80) hours of accumulated compensatory time off. Any overtime beyond this maximum will be paid.

xviii Article 16. WAGES

Option A:

Section 1. Employees will be compensated as outlined in Appendix A. In the event that there is a rounding difference between the attached wage schedule and payroll, payroll shall govern.

Option B:

Section 1. Employees will be compensated according to a ___ step pay plan as outlined in Appendix A. Employees below the top step will move to the next step on the pay plan upon obtaining an overall satisfactory rating on their annual performance evaluation. This step increase will be effective on the beginning of the first full pay period following the employee's anniversary date. In the event that there is a rounding difference between the attached wage schedule and payroll, payroll shall govern. In no event may an employee move beyond the top step of the pay plan.

Section 2. New employees may be hired above the applicable start rate for the classification, if the Employer determines that the employee has additional education or training, experience or other qualifications warranting additional recognition.

Section 3. In no event may an employee exceed the maximum wage for the wage range.

Section 4. Employees who are promoted to a new classification will move to the closest step in the new wage range that meets or exceeds five percent (5%) above the employee's existing wage (exclusive of overtime).

Section 5. Employees who are demoted to a new classification will move to the closest step in the new wage range that is at least five percent (5%) below the employee's existing wage(exclusive of overtime).

Option C:

Section 1. Employees will be compensated according to a ___ step pay plan as outlined in Appendix A. Effective the beginning of the first full pay period in _____, the existing wage plan will increase by ___ percent (__%). Effective the beginning of the first full pay period in _____, the existing wage plan will increase by ___ percent (__%).

Section 2. Employees below the top step will move to the next step on the pay plan upon obtaining an overall satisfactory rating on their annual performance evaluation. This step increase will be effective on the beginning of the first full pay period following the employee's anniversary date. In the event that there is a rounding difference between the attached wage schedule and payroll, payroll shall govern. In no event may an employee move beyond the top step of the pay plan.

Section 3. New employees may be hired above the applicable start rate for the classification, if the Employer determines that the employee has additional education or training, experience or other qualifications warranting additional recognition.

Section 4. In no event may an employee exceed the maximum wage for the wage range.

Section 5. Employees who are promoted to a new classification will move to the closest step in the new wage range that meets or exceeds five percent (5%) above the employee's existing wage (exclusive of overtime).

Section 6. Employees who are demoted to a new classification will move to the closest step in the new wage range that is at least five percent (5%) below the employee's existing wage (exclusive of overtime).

xix Article 17. SENIORITY

Section 1. Seniority shall be defined as the length of continuous service with the Employer.

Section 2. The Employer shall maintain a seniority list of all employees covered by this Agreement.

Section 3. Seniority shall terminate when an employee is separated from employment.

Section 4. Seniority shall not accrue under the following conditions:

- 1 During a period of layoff;
- 2 During a period of an unpaid leave of absence other than military leave or other applicable law; or
- 3 During a period in which the employee is on strike.

Section 5. Employees may be laid off by the Employer to meet the needs of the Employer. In the event a layoff is necessary the work force shall be reduced based on best ability to perform available work and work performance within the job classification as determined in the Employer's discretion following the Employer's review of performance evaluations, instances of counseling and discipline. In the instances where employees have equal ability to perform available work and equal work performance, seniority will prevail.

Section 6. An employee's right to recall to the same job classification shall exist for six (6) months after the employee's last date of layoff. Failure to return to work within ten (10) calendar days of notice of recall shall terminate all right to recall. Notice of recall shall be in the form of a registered letter sent to the employee's last address on file with the Employer. It shall be the employee's duty to notify the Employer of any address change. Recall shall be based on the same criteria as layoff and no new employee will be employed to fill a vacant position if an employee is available from the layoff list with the ability to perform the work of the position. Refusal or failure to accept recall for a position for which the employee on layoff is qualified shall terminate all right to recall.

xx Article 18. SAVINGS CLAUSE

This agreement is subject to the laws of the United States, the State of Minnesota, and the City. In the event any provisions of this agreement shall be held to be contrary to law by a court of competent jurisdiction, or administrative ruling or is in violation of legislation or administrative regulations, such provisions shall be void. All other provisions shall continue in full force and effect. The parties agree to immediately meet and negotiate a substitute for the invalidated provision.

xxi Article 19. COMPLETE AGREEMENT

Section 1. This Agreement shall represent the complete agreement between the Union and the Employer.

Section 2. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the complete understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the

knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

Section 3. Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment are hereby superseded.

xxii Article 20. MUTUAL CONSENT

This Agreement may be amended any time during its life upon the mutual consent of the employer and the union. Such amendment, to be enforceable, must be in writing and attached to all executed copies of this Agreement.

xxiii Article 21. DURATION

This agreement shall be in full force and effect from January 1, _____ through December 31, _____, and shall be automatically renewed from year to year thereafter unless either party shall notify the other, in writing, by October 1, _____, or by October 1 prior to any subsequent anniversary date, that it desires to modify or terminate this agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the dates noted below:

FOR: Union

FOR: Employer

Dated:

Dated:

**LEAGUE OF MINNESOTA CITIES
MODEL CONTRACT LANGUAGE – CITY HALL UNIT
KEY TO ENDNOTES**

ⁱ COVER PAGE

Q: Why have a cover page?

A: A cover page makes it easier to locate and refer to the appropriate contract. In addition, establishing a uniform cover page is the clearest indication to bargaining units that the employer desires to have uniformity in their collective bargaining agreements.

ⁱⁱ TABLE OF CONTENTS

Q: Why have a table of contents?

A: A table of contents make is administratively easier to locate applicable contract provisions.

ⁱⁱⁱ Article 1. . INTRODUCTION

Q: Why have this article?

A: Historically, the city’s purpose in including this section is to identify the parties in an easy to locate area. This is particularly helpful in the event that the agreement does not have a cover page.

Given the fact that the cover page and often the definition section identify the parties, the introductory paragraph may be unnecessary. The union will often seek to have additional language included that lists the intent of the parties. The danger with such language is that the union may use this language to file a grievance when it feels that the city has done something to disrupt the labor management relationship but is not able to point to a specific contractual section to establish a violation. More importantly, an arbitrator may use this language as a factor to consider when reviewing a grievance involving ambiguous contract language. In the event that the contract language is ambiguous, the arbitrator may interpret the language in a manner that will best promote the intent of the parties.

^{iv} Article 2. RECOGNITION

Q: Why have this article?

A: The recognition article is included in an agreement to identify the bargaining unit covered by the agreement. This should be drafted as accurately as possible because it will establish not only the individuals covered in the bargaining unit, but may also be used to establish what is considered “bargaining unit work.”

The best practice for this section is to reproduce the bargaining unit description certified by the Bureau of Mediation Services (BMS). In the event that the original certification is amended, the amended unit description should be included. The appropriate BMS reference number will provide a historical reference for the parties.

Q: What should a city do if the parties specifically agree to exclude positions from the bargaining unit?

A. In the event that the parties specifically agree to exclude positions from the bargaining unit, this section should also list those positions as excluded. The BMS unit description usually will do this in general terms. PELRA provides a broad list of “public employees” that the union and the employer may want to restrict by agreement. Categories that the city should seek to exclude are “intermittent/casual and temporary” employees that are further defined in the agreement. While PELRA excludes certain intermittent/casual and temporary employees from the definition of public employees, these exclusions have restrictions that may not provide sufficient flexibility (such as the 67 day limitation on temporary employees who are not students) for the city. The city and union can agree for a broader exclusion for the bargaining unit.

Q: Why have language on amending the bargaining unit?

A: In order to allow ease of procedure when new positions are developed or an existing position is modified, it is beneficial to have specific language permitting this review. There is also a statutory process for the BMS to conduct this review.

▼ Article 3. DEFINITIONS

Q: Why have this article?

A: This article is an important part of a collective bargaining agreement because it defines the terms commonly used in the balance of the collective bargaining agreement. In the event that a term is not defined in this section, it must be defined elsewhere in the agreement or there will be an ambiguity. The more terms that are defined and the more specific the definition, the less likely there is to be a dispute about whether a term is unclear. Definitions can limit the individuals in the bargaining unit, define who is eligible for benefits and identify the parties. Conversely, imprecise definitions may create an ambiguity that will create rather than deter grievances.

Q: How does this language differ from that in PELRA?

A: The definition of intermittent, seasonal and part time employment in PELRA is narrower than in the model contract language. The intent in providing longer periods before employees are placed into the bargaining unit by agreement is to afford the city greater flexibility. It is likely that the union will not agree to this portion of the model

language absent some give and take in negotiations. The one year limitation noted as a cut off for temporary employees, in particular, likely provides a starting point for negotiations with the union countering at the 67 days noted in PELRA.

^{vi} **Article 4. UNION SECURITY**

Q: Why have this article?

A: This article typically addresses two areas: designation of representatives and dues payment. The first issue is to identify and limit the number of stewards, address their duties relative to the workplace and detail access of nonemployee business agents. The dues issue relates to the city handling employee dues. Where the city is performing this duty for the union, it is vital that the union agree to hold the city legally harmless from performing this function. The city may ask for the union to pay an administrative fee for the city's role in performing this function.

At times, the union will seek to insert language in this section on unit members' rights to jobs, posting, bulletin boards, meeting space, use of employer premises and compensation for time spent in labor negotiations. The city should discourage any of this language. The city's obligation to provide time off to attend to union business is provided for in PELRA at Minn. Stat. §179A.07, subd. 6.

^{vii} **Article 5. MANAGEMENT RIGHTS**

Q: Why have this article?

A: Management right clauses are the most important portion of the collective bargaining agreement. While PELRA defines management rights (areas of exclusive management authority), a city may voluntarily give up these rights. The key in this area is to make sure that a city has not voluntarily given up rights where it has exclusive authority. In addition, in instances where an arbitrator is deciding a contract language grievance involving an ambiguous term, a broad management rights article can be used to interpret it in a manner most consistent with the management rights statements or offset the philosophy language in the introduction section. The management rights article should reserve as much right to management as not specifically limited in the other areas of the collective bargaining agreement. Specifically, any rights not granted should be reserved to management.

Q: Why are section 1 and section 2 both beneficial?

A: Section 1 details a broad statement of management rights. It is intended to be the broad grant of authority. Section 2 provides a more detailed statement of management rights. A tool that arbitrators may use in interpreting language in the collective bargaining agreement is to give priority or emphasis on specific language over general language. In order to address that contract interpretation device in favor of the city,

section 2 specifically references a number of the more important management rights. A number of these are also listed in PELRA.

Q: Is there any authority that a city should seek to specifically include that is not already outlined in PELRA?

A: The right to subcontract should be specifically addressed in the collective bargaining agreement. Subcontracting rights and limitations are initially determined by the collective bargaining agreement. If the agreement does not specifically allow subcontracting, the general rule is that the contracting out decision is an inherent managerial right but that the city must negotiate over the effects of its decision and may not unilaterally contract out the work until impasse.

Q: Why have language on whether the city may waive its management rights by inaction?

A: The agreement should contain a “no waiver” clause so that earlier inaction does not later haunt the employer. This is consistent with the goal of not limiting any management rights in the agreement except as they are specifically noted.

Q: Should this section reference a city’s personnel policies?

A: Some agreements include a provision that states that unless otherwise superseded by an express term of the collective bargaining agreement, the terms of the personnel policies will apply. The benefit to placing this language in the collective bargaining agreement is that the city can then point out to the union that many of the subjects covered in the personnel policy apply to the union and therefore, they do not have to be addressed in the actual body of the collective bargaining agreement. It generally gives the city a short contract if the union agrees and, unless there is some additional language placed into the management rights clause, the personnel policies remain a flexible document that management can change. The danger in entering into a personnel policy document is primarily where personnel policies are poorly drafted and give broad interpretations of certain provisions or where the management rights clause provides that the personnel policies are in effect as of the beginning date of the contract will continue to apply to all members through the term of this agreement. In that instance, the city no longer has a “living document” that management can change to fit changing circumstances or to address specific instances in which the personnel policies are deemed deficient.

viii **Article 6. NO STRIKE**

Q: Why have this article?

A: The language in this article is usually straightforward. Under PELRA, essential employees may not strike and nonessential employees may only strike under limited circumstances. Illegal strikes are defined and addressed in PELRA. Minn. Stat. Sec.

179A.19. Therefore this language is arguably not as important as other provisions in the collective bargaining agreement. Nevertheless, this language is important to broadly define what is prohibited as a strike. The optimal language in this section also imposes a duty on the union to inform employees of their obligation. Finally, it outlines that a violation of this section is grounds for discipline.

Q: Does this language prohibit striking in every instance?

A: No. The language is directed at striking during the term of the agreement.

Q: Why is this language included in this model contract and not in the model contract for the police?

A: The police are prohibited from going on strike by statute.

^{ix} **Article 7. PART TIME EMPLOYEES**

Q: Why have this article?

A: This article is generally included to define the cut off and eligibility for employee benefits and wages.

Q: What other issues besides those listed will unions typically seek to negotiate in this article?

A: Unions will commonly seek to address accumulation of seniority for part time employees that may be used to provide preference for full time vacancies.

Q: Are the hours listed as “cut off” for eligibility purposes

A: The hours listed are simply a general reference. In instances where the city has a successful practice or the personnel policies provide a different cut off, the hours that the city currently utilizes can be freely substituted.

Q: Why is this language included in this model contract and not in the model contract for the police?

A: The police bargaining units in the state have traditionally made limited use of part time employees. Police officers also distinguish individuals working under a part time license. In the event that a city utilizes or plans to utilize part time police officers who are not on a restricted part time peace officer license, the part time employee language in this article may apply to a police bargaining unit.

x Article 8. INSURANCE

Q: What are the most important elements to consider in negotiating this article?

A: Good language in insurance is a “me too” in which the union members are covered by the same insurance plan and subject to the same conditions and requirements and contributions as nonunion employees. This is beneficial because it keeps all eligible employees on a single citywide program and is particularly beneficial when a city has a cafeteria plan. Aside from the ability to provide uniformity, the proposed language also allows flexibility. A city also has the authority to establish the premium contributions pursuant to this language. In the event the unions will not agree to the “me too” language, the next preferable language is to provide a set dollar amount as the city’s contribution toward the insurance premium. The model language references health insurance and has blanks for any other forms of insurance (such as life insurance or dental insurance) that a city may provide.

Q: What is language to be avoided in the insurance article?

A: Language to be avoided provides too much detail into benefit levels, eligibility and coverage issues. Language establishing the maximum amount that an employee will pay shifts the balance of any increase to the city.

Q: What about retiree insurance?

A: Because of the concerns about the cost of retiree health insurance plans, these programs are becoming increasingly rare and are generally discouraged as specific benefits in a union contract. References to post retirement health savings accounts and similar programs should follow the “me too” format of the health insurance language noted in Section 1.

Q: What are the key differences between the options?

A: Option A retains the most flexibility for a city. Accordingly, it is the preferred language for the city. Option A is most likely to receive great objection from the union because it provides such wide discretion for a city.

Option B provides less discretion for a city but also specifies the dollar amount maximum that the city will contribute. The use of the phrase “up to” is included to provide that this amount will not exceed the actual premium amount. Option B also provides for separate treatment for life insurance. Typically, cities that provide life insurance coverage do so at no cost to an employee and provide a designated amount. Option B also provides a typical clause that applies a city’s policy allowing employee contributions to be withheld on a pretax basis. The language in this suggested section 3 references a uniform citywide policy on this benefit.

Option C mirrors Option B with the exception that it provides for a differing city contribution toward the premium for single and family coverage. A city may also provide options such as single plus one as a benefit option. In this case a city may designate a contribution toward premium amount toward this special coverage but should be aware that it may be limiting its right (or making it more difficult) to drop such an option without union agreement in later negotiations. The life insurance and pretax benefits of Option B can also be applied to Option C.

Option D utilizes a simply cafeteria style flexible benefits program rather than separate insurance provisions.

NOTE: Under Minn. Stat. Sec. 471.6161, subd.5, an exclusive representative must agree to any reduction in the “aggregate value of benefits provided by a group insurance contract” for employees it represents. The ideal contract language on health insurance (i.e., language that would give a city the most flexibility in changing health insurance provisions) is as follows: “The Union agrees to any changes in the health insurance benefits, including a reduction in such benefits.” This language would expressly provide employers with flexibility to reduce benefits. The reason this language is not included in the model union contract is that it is unlikely that most unions would agree to such language.

^{xi} **Article 9. PROBATION**

Q: Why is this article important?

A: This section is sometimes included in the general article on seniority. Probationary periods are important to include because they provide the city with a “free initial look” unless the individual is entitled to a statutory protection such as veterans preference. PELRA provides that “after the probationary period of employment, any disciplinary action is subject to the grievance procedure and compulsory binding arbitration.” Minn. Stat. §179A.20, subd. 4(b). The city should avoid any efforts to provide protections against discharge to probationary employees. It is more common for probationary employees to be permitted to use the grievance procedure in order to contest denial of benefits or other contractual terms and conditions.

Q: Why is a six month probation noted?

A: The probation period can be designated for any reasonable length in negotiations. Typically, in instances where a position requires lengthy training or has a high level of discretion and authority, the probation period is longer. Part time employees would be subject to the requirement based on hours worked rather than simple passage of time.

Q: Should language be included stating that probations are subject to extension?

A: Language allowing a city to extend an employee’s probation is generally suggested as additional authority for a city in a collective bargaining agreement. As a matter of practice, where an employee on probation has not performed in a manner allowing the city to make a determination after this period of time, a city is generally better off terminating the employee than extending the probationary period.

Q: How should a city treat a probation for an existing employee who changes jobs?

A: The issue in this instance is whether a city will allow “bumping back” by the employee and what will occur if the employee does not satisfactorily perform in the new classification. This is usually permitted where the new position is a promotion or transfer for a short period of time – typically tied to the amount of time it takes to fill the vacancy created by the employee initially moving into the new position. It is not available to allow an employee to return to their old position from a demoted position. The model language also addresses returning from probation outside of the bargaining unit. The model language does not address demotions. Accordingly, a demoted employee would not serve a probationary period.

xii Article 10. GRIEVANCE PROCEDURE

Q: Why is this article important?

A: This is a statutorily mandated section of the union contract. Minn. Stat. §179A.20, subd. 4 requires that all contracts include a grievance procedure providing for compulsory binding arbitration of grievances including all written disciplinary actions. If the parties cannot agree on the grievance procedure, the BMS has a grievance procedure that will control.

Q: What is the most important element of a grievance procedure?

A: Aside from the statutorily required elements of this grievance procedure, the most important element of a grievance procedure is to define what is considered a grievance. Good practice is to limit its application to a claimed violation of a specific contract provision. Language that allows the grievance procedure to be used for any employment dispute is too broad in that it allows grievances based on the personnel policies, employment laws and other areas not addressed in the body of the contract.

Q: How should steps be put in the grievance procedure?

A: Steps may be freely added or removed from the model language. Since the supervisor is the initial management person with the best knowledge of the facts, the supervisor is the logical first step in the grievance process. This helps a city define its position. Arbitration is the required last step. The final decision making authority, such as city manager or city council, is usually the last step prior to arbitration. Other steps in the process should be added or substituted based on the size and organizational structure of a city. Cities of medium size will typically have three steps: the department head will be the step 1 city representative, the city administrator will be the step 2 city representative and the city council will be the step 3 city representative. In cities using the city manager form of government, the city manager will substitute for the city administrator and there will not be a step 3 to the city council. Following these steps, the final step will be arbitration.

Q: What is the primary difference in Option A and Option B?

A: Option A provides the greatest latitude in city selection of the grievance representatives. Option B provides the greatest simplicity.

Q: Will the Union object to the time lines related to selection of an arbitrator?

A: The language related to selection of an arbitrator often will be opposed by the police unions as unduly restrictive. The proposed language was added to the model language based on a recurring problem with a police union not processing arbitrations in a reasonable time after notifying a city that the matter was going to be appealed to arbitration. This language may be viewed as desirable in an existing contract where this has proven to be a problem rather than in the initial union contract.

Q: What is an election of remedies clause and why is it important?

A: Election of remedies provisions are designed to prevent an employee from using more than one procedure to contest the same employment issue except in those instances where a specific law permits multiple appeal rights. For example, an employee who is over age 40 and is covered under a union contract is fired. The employee can file a grievance, appeal under the city personnel policies and file a charge with the federal equal employment opportunity commission or state human rights department. An election of remedies clause basically states that the employee has to choose one and forego the other means of contesting the matter. In this particular example, cities may not limit an employee's ability to access the equal employment opportunity commission or human rights department on the discrimination charge but could preclude the employee from utilizing the nonunion appeal procedure.

^{xiii} **Article 11. DISCIPLINE**

Q: Why is this article important?

A: The general provision in a discipline article establishes that discipline should be for just cause. The employer's objective in drafting this section is to have the discipline language drawn to allow it the broadest authority to determine the nature of the punishment based on any number of factors including prior history and the nature of the offense. The union will seek to have punishment be progressive. The union will also commonly seek to have discipline of a certain age removed from the employee's personnel file. A city should be reluctant to include language on this issue based on its duty to retain discipline under the government data practices act and as a matter of its record retention policies.

^{xiv} **Article 12. HOLIDAYS**

Q: Why is this article important?

A: Typically model language on fringe benefits simply references a city's personnel policies.

Q: What holidays should be included?

A: The holidays listed in the model contract are common holidays. In negotiating a union contract, the likely list of covered holidays will begin with a review of a city's observed holidays.

Q: Why are holidays that fall on a weekend observed on a day other than the actual holiday?

A: Cities typically will observe the same number of holidays from year to year as days off for employees. Holidays that occur on a weekend are otherwise lost to employees. A special problem arises when a city has a holiday of December 24 and a holiday of December 25. Using the model language that a Saturday holiday is observed on a Friday, in the event that December 24 occurs on a Friday, the same day would constitute two holidays. Rather than leave this unclear, a city with this holiday should define what occurs in this instance – for example, two options are:

1. In the event that December 24 falls on a Friday, the preceding Thursday will be observed as the December 24 holiday and the December 25 holiday will be observed on Friday; or
2. December 24 will be considered a holiday only in those limited instances in which it falls on Monday through Thursday.

Q: How much pay is actually paid to an employee who works a holiday under the model language?

A: The employee who works the holiday will receive two times pay for working the holiday (their regular pay plus the holiday pay). Unions typically will ask that the actual pay be at time and one-half the regular pay in addition to the holiday pay.

Q: What are the overtime issues associated with holidays?

A: The model language does not consider hours not worked (including holiday hours not worked) as hours that count toward eligibility for overtime. The Fair Labor Standards Act (FLSA) only requires that actual hours worked be counted toward overtime eligibility.

Q: Are there any other payment options for holidays?

A: Some departments seek to provide an alternate paid day off or “bank” the day as compensatory time off when an employee works on a holiday. These may create scheduling issues in departments of a limited size.

Q: What about part time employees?

A: Treatment of holidays for part time employees is noted in the separate part time employee article.

^{xv} **Article 13. VACATION**

Q: This language significantly differs from the personnel policies in our city but the union will not agree to the general references in Option A. Should I follow this model language closely?

A: Specific fringe benefit policies such as vacation (or flexible time off) are difficult to standardize other than to outline a general reference to city personnel policies as noted in Option A. As noted in the management rights discussion, the primary benefit to Option A, which places the reference to the city personnel policies in the union contract is that it generally gives the city a short contract. In addition, unless there is some additional language placed into the document, the personnel policies remain a flexible document that management can change. The danger in entering into a personnel policy referenced union contract is primarily where the personnel policies are poorly drafted. Another option to consider carefully before agreeing is to provide that the personnel policies which are in effect as of the beginning date of the contract will continue to apply to all members through the term of this agreement. In that instance, a city no longer has a “living document” that management can change to fit changing circumstances or to address specific instances in which the personnel policies are deemed deficient.

A more likely negotiation will result in the placement of specific language addressing vacation into the body of the union contract. In these instances, the language should address which employees are eligible (for example only full time regular employees) and define the benefit accrual rate and note any limitations or utilization rules in the following sections.

Q: What are the primary difficulties in accruals for employees?

A: The accruals for employees generally are not a difficult consideration provided all of the employees in the bargaining unit work the same hours per shift and days per week. The difficulty arises when one group work different lengths of shifts than other city employees. The issue is illustrated by this example: a city clerical employee works 8 hour days Monday through Friday. A public works employee for the city works 10 hour days Monday through Thursday that average out to 40 hours per week. The city clerical employee and the public works employee may accrue vacation the same rate if it is accrued monthly but will be required to utilize it in different blocks – 8 hours for the city employee and 10 hours for the police officer.

Q: City policy on maximum accrual is not two times annual accrual. Which maximum accrual should a city use?

A: The city should use its existing maximum accrual.

^{xvi} **Article 14. SICK LEAVE**

Q: Our city uses flexible time off. How should we address this benefit?

A: Cities that utilize flexible time off programs should seek to utilize the city's program in place of the sick and vacation policies in this model contract. Utilizing Option A with a reference to flexible time off rather than sick or vacation is the best option. In the alternative, a city should seek to include the key provisions of the policy into the union contract related to accrual, notice related to use and any restrictions on the benefit.

Q: When should sick leave be permitted?

A: Use of sick leave should apply to the employee. Pursuant to state law, it also must apply to sick or injured children. Minn. Stat. Sec. 181.9413. Children is defined as an individual under age 18 or an individual under age 20 who is still attending secondary school. Sick leave provisions also commonly apply to a spouse. Additional covered family groups are a frequent subject to negotiations.

Q: City policy on maximum accrual is not two times annual accrual. Which maximum accrual should a city use?

A: The city should use its existing maximum accrual.

^{xvii} **Article 15. HOURS OF WORK**

Q: Why is this article important?

A: Issues related to scheduling are among the most important management rights for cities. Retention of this management right is detailed throughout the model language. That is the reason for limited language in this area.

Q: What is the scope of the overtime language?

A: The federal Fair Labor Standards Act requires employees to receive overtime for all hours actually worked in excess of 40 hours in a one week period.

Q: What are concerns with compensatory time off?

A: Compensatory time off presents a flexible tool for cities and employees but also comes with significant risks. It is not permitted in the private sector. The benefit for a city is that compensatory time off may operate as an overtime compensation system that

does not result in additional pay – an employee simply takes time off. A compensatory time off system works well where there is cyclical work and down time such as in public works and both the employee and city want the employee to take the time off during the light work load time. The difficulty with compensatory time off is that it is subject to Department of Labor rules that limit the city’s authority to regulate use of compensatory time off. Employees must be permitted to use compensatory time off within a reasonable period after making the request if it does not unduly disrupt city operations. Undue disruption is the only limitation on requested use. This standard is significantly more stringent than simple inconvenience to a city. Significantly, the need to replace the individual with another individual working overtime hours does not meet the definition of “undue disruption”. This creates a potential additional expense through compounding. For example:

an employee who works two hours of overtime receives three hours of compensatory time off. The employee takes the three hours off on short notice and the employer must replace the employee with a second employee who is earning overtime hours for the three hours. The second employee earns four and one-half hours for this work and takes off the following week. The employer replaces the second employee with a third employee who works the four and one-half hours and receives six and one-fourth compensatory hours off.

As this example shows, the original two hours of work has cost the employer 6.25 hours with no end in sight as long as the employer is shorthanded and has to replace the employee with another employee working overtime. It does not work as well in a department where coverage must be provided.

In addition, accrued and unused compensatory time off must be paid out to a terminating employee’s rate at the higher of the employee’s rate at the time of termination or the average regular rate over the employee’s prior three years of employment. Finally, the Department of Labor has established a maximum accrual of 240 hours (based on 160 hours of actual overtime work). Because of the potential size of a payout to an employee and the fact that it is a legal liability for a city, the proposed maximum accrual under the model contract is significantly less than this statutory maximum.

^{xviii} **Article 16. WAGES**

Q: Why is there limited model language in this area?

A: This area will be subject to wide variations in negotiations. The simpler the better is the general rule for pay plans. Suggested language provides that employees shall be paid as provided in Appendix A. Appendix A can then show the pay ranges and (if practical) actual wages of individuals for the length of the contract. A city should understand that this listing of individual wages is impossible in many instances, particularly where there is a merit based program or other system in which the exact pay cannot be determined at the time the agreement is signed.

Q: What are the key differences in the options?

A: Option A is very basic. Option B provides more detail. The benefit to Option B is that there is less room for controversy where this detail is included. Option C provides even more detail. Outlining percentage increases as noted in Option C and other explanations of the numbers on the appendix provides the greatest detail.

Q: City policy differs on treatment of promotions and demotions. Which language should be used?

A: The model language uses five percent (5%) as a simple movement that may be freely altered based on whatever practice a city deems works best.

Q: What are key considerations in negotiating wages?

A: Beyond consideration of city finances and responsibility to its citizens, a city generally considers a number of factors. A city must be aware of its statutory obligations pursuant to the Minnesota pay equity act when negotiating pay plans and general increases. This includes a serious consideration of internal equity. Consideration of the external comparable market is also an important consideration. This is important as the city should consider whether it needs to adjust rates to retain and attract quality employees. Consideration of inflation rates and data such as the change in the consumer price index are also commonly considered.

^{xix} **Article 17. SENIORITY**

Q: Why is this article important?

A: A city will typically take the position that merit and qualifications, rather than seniority, should prevail in job related settings. The model language does not provide beneficial treatment based on seniority in promotions or other assignment preferences.

Q: How are layoffs treated?

A: Unions will typically argue that layoffs should be addressed by seniority. The model language utilizes performance as the primary criteria for the city but is not wholly discretionary as it requires a review of abilities and work record. This performance based approach is typically resisted by the union. Layoffs of greater than six months often create significant retraining issues upon recall.

^{xx} **Article 18. SAVINGS CLAUSE**

Q: Why is this article important?

A: The savings clause is included to provide that any illegal provision will be severed from the agreement (as opposed to having the entire contract declared to be illegal) and to

note that the parties will address the situation. PELRA provides that an agreement cannot be in conflict with state law or “rules promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with” PELRA.

^{xxi} **Article 19. COMPLETE AGREEMENT**

Q: Why is this article important?

A: This article is also sometimes called the zipper or waiver clause. These articles are very important in union contracts because they provide that once the union has signed off on the contract, it can’t keep coming back and seeking to negotiate more issues with the city during the contract term. Broadly drafted these articles also operate to waive any matters that are not listed within the collective bargaining agreement.

^{xxii} **Article 20. MUTUAL CONSENT**

Q: Why is this article important?

A: This is the clause that allows the parties to mutually escape the restrictions of the waiver clause if they both choose to address the issue. The major requirements should be that both parties want to address the issue and that any amendment must be in writing and signed.

^{xxiii} **Article 21. DURATION**

Q: Why is this article important?

A: This article provides that the contract continues from a designated start date to an end date and provides a date by which the union must notify the city of a desire to negotiate a successor agreement. Contracts for cities cannot exceed three years. The provision related to notification of intent to negotiate a successor contract typically provides that notice must be given 60-90 days prior to the end of the contract term. PELRA provides that at least a 60 day notice must be given or the party requesting the negotiations may be subject to a fine. PELRA also provides that after the expiration of an old contract and prior to the time when the parties agree to a new contract, the terms of the prior contract continue in full force and effect. Minn. Stat. §179A.20, subd. 6.