

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

City of Red Wing, Red Wing, Minnesota

- and -

Minnesota Teamsters Public & Law Enforcement Employee's Union,
Local 320, Minneapolis, Minnesota

BMS Case No. 07-PN-0791

NAME OF ARBITRATOR:	George Latimer
DATE AND PLACE OF HEARING:	April 14, 2008 Red Wing, Minnesota
POST-HEARINGS BRIEFS RECEIVED:	May 10, 2008
DATE OF AWARD:	May 20, 2008

APPEARANCES

FOR THE EMPLOYER: Michael Waldspurger, Attorney

FOR THE UNION: Paula R. Johnston, General Counsel

INTRODUCTION

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. 179A.01-30. Teamsters Local 320 (Union) is the exclusive representative for the Police Supervisory Unit employed by the City of Red Wing (Employer or City).

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. 179A.16)

The prior collective bargaining agreement between the parties expired on December 31, 2006. The parties negotiated for a successor agreement and agreed to all provisions except one. The parties agreed to execute the new collective bargaining agreement, effective January 1, 2007 through December 31, 2009, subject only to the Arbitrator's decision on the one issue at impasse. Hearing was held April 14, 2008. Both parties had full opportunity to submit documents and examine witnesses. Written closing briefs were received by the Arbitrator on May 10, 2008, and the record was closed.

On August 14, 2007 the Bureau of Mediation Services certified the following issue for interest arbitration:

**Wages, Step Replacement-Step Placement on New Pay Equity
Grid/Salary Schedule-Art. XVI**

**APPLICABLE CONTRACT LANGUAGE
FROM THE 2007-2009 AGREEMENT**

Article XVI Wages

16.1 Implementation of Pay Equity Plan effective 1-1-07.

The City Council adopted a new pay plan on December 11, 2006. In accordance with the new pay plan, the parties agreed as follows: Each employee's current rate of pay (based on 2006) will be multiplied by the cost of living increase. The new pay plan will also be adjusted by the same rate. Assignments onto the new pay plan shall be as follows:

Each employee will be assigned a step based on a wage that is equal to or greater than that employee's current rate on the applicable grade for his or her job classification.

An employee who has a wage below Step A will be raised to Step A effective January 1, 2007.

Any employee who has a wage over the maximum step will remain at that wage until such time as the maximum step of the applicable grade exceeds the employee's compensation. Any employee who is over the maximum will receive a lump sum equal to the cost of living that does not exceed the employee's maximum grade rate in January of each year until the employee's wage equals the maximum grade rate. That employee will then be assigned to the maximum step rate of the applicable grade.

After the initial placement and appeal process, the following would apply for appeals to a job class rating. If the City has a job description rating and an employee disagrees with that rating and has been in the position a minimum of one year, the employee may request an independent review of the position grade at the employee's expense. Employers' Association would conduct the review of the job rating grade. If the job description rating does in fact change, the City will reimburse the cost of the rating to the employee.

No additional step increases will be granted in 2007. Step increases will occur for current employees beginning on January 1, 2008, except for employees hired in 2006 or later. Employees hired in 2006 or later will receive increases based on their date of hire.

NOTE: Effective 12-6-07, an arbitration date is still pending. The parties agree to implement changes to the contract, including the City proposed step placement as stated in Article 16.1. The placement for each employee is as follows:

J. Beckman	1/1/07 Step D (3.43% increase)
	1/1/08 Step E (6.93% increase)
	1/1/09 Step F (6.38% increase)
G. Grave	1/1/07 Step D (3.43% increase)
	1/1/08 Step E (6.93% increase)
	1/1/09 Step F (6.38% increase)
C. Lunde	1/1/07 Step D (3.43% increase)
	1/1/08 Step E (6.93% increase)
	1/1/09 Step F (6.38% increase)
W. Mettling	1/1/07 Step D (3.43% increase)
	1/1/08 Step E (6.93% increase)
	1/1/09 Step F (6.38% increase)
G. Rohr	1/1/07 Step C (3.57% increase)
	1/1/08 Step D (7.04% increase)
	1/1/09 Step E (6.46% increase)

If the results of arbitration are something other than what the City has proposed, those changes will be made per the arbitration agreement.

FINAL POSITION OF THE CITY

As reprinted from the collective bargaining agreement above. Sergeants Beckman, Grave, Lunde and Mettling placed at Step D effective January 1, 2007, and proceeding to steps E and F the following years as provided in the contract. Sergeant Rohr placed at Step C effective January 1, 2007 and proceeding to Steps D and E the following years as provided by contract.

FINAL POSITION OF THE UNION

Sergeants Beckman and Lunde placed at Step E effective January 1, 2007, proceeding to Steps F and G the following years as provided by contract. Sergeants Grave and Mettling placed at Step F effective January 1, 2007, proceeding to Step G the following year as provided by contract. Placement of Sergeant Rohr is undisputed.

BACKGROUND AND DISCUSSION

In 2006 the City contracted with Employers Association, Inc. to do a compensation study. The study found that Red Wing was in compliance with the Minnesota Pay Equity Act. However, it recommended the City move toward a more linear salary schedule, with less pay compression between employees and their supervisors/managers. Employers Association also recommended an increase in overall pay levels, to position the City “below, but closer to, nearby metro area jurisdictions...in close proximity to other non-metro southeastern Minnesota jurisdictions in its size class...” (Employer tab 4, Employers Association, Inc Compensation Study Executive Summary)

Following this compensation study the City bargained a new 7 step wage scale with its unions, including Local 320.

The parties are not in dispute regarding the wage scale itself, or the Grade assigned to the Sergeant job class (Grade 13). The dispute at issue is with the step placement given to each of the four Sergeants within that grade. The language at issue is found in the first bullet point in Article XVI, 16.1:

“Each employee will be assigned a step based on a wage that is equal to or greater than that employee’s current rate on the applicable grade for his or her job classification.”

The Union argues the step placements given to Sergeants Beckman, Grave, Lunde and Mettling are not appropriate, because the resulting wage rates are inconsistent with that paid to employees in the Fire Captains bargaining unit under its collective bargaining agreement with the City.

Background to this argument is as follows. In the late 1990s the City made bargaining proposals to both the Fire Captains bargaining unit and the Police Sergeants (then Lieutenant) unit, to increase the pay scales in exchange for treating the employees as ‘exempt’ from overtime pay under the Federal Fair Labor Standards Act. Both units had been treated as ‘non exempt’ prior to this time. The Fire Captains unit agreed to this trade. This resulted in a bigger pay increase for that unit in 1999. Since the Police Sergeants unit did not agree to be treated as exempt employees, they did not enjoy a similar increase, but instead continued to receive overtime pay. (Union argument, brief, Issue 1 tab) As a result, the Union argues that when the 2007 wage increases were implemented, the effect was a ‘windfall’ for the Fire Captains, since step placement was based on each employee’s current wage. (Union oral argument, brief, Issue #1 tab)

The Union asserts the job of Fire Captain is clearly comparable to that of Police Sergeant. The two positions were historically paid virtually the same wage. The Employers Association’s study evaluated both positions as Grade 13. Therefore it is fair to award the same wage to employees in the two jobs.

The City does not dispute the two jobs are comparable. Rather it argues the method for placing employees on steps in the new pay plan was

applied consistently, not only to all bargaining units but also to unrepresented employees, without regard for an individual employee's seniority with the City. This included placement of upper management employees at step D of their respective grades, despite 20-34 years of seniority with the City. Therefore the City argues it would be inappropriate to place employees in the Sergeants unit using a different method. It would be damaging to employee morale, and would result in demands from other bargaining units for similar special treatment. (Employer oral argument, brief, tabs 6 & 7)

The Employer points out that it was not obligated to convert to the new pay system recommended by the compensation study. It chose to pursue the new system, which resulted in increases for all employees. The increases were above those historically approved by the City Council. (Employer tab 15) The method used to implement the new system meant that no employee would take a pay cut:

“ Each employee's current rate of pay (based on 2006) will be multiplied by the cost of living increase. The new pay plan will also be adjusted by the same rate. Assignments onto the new pay plan shall be as follows: Each employee will be assigned a step based on a wage that is equal to or greater than that employee's current rate on the applicable grade for his or her job classification.” (Article XVI of the current contract between the parties)

With regard to market comparisons, the City submitted data indicating its final proposal is very respectable relative to comparable jurisdictions. One comparison ranks Red Wing's pay rate for Sergeants fourth of seventeen comparable jurisdictions. A larger data pool of greater Minnesota cities indicates the wage increases offered by Red Wing to be in the average range. (Employer tabs 25, 27 and 28) The Union does not dispute these

figures, but argues they are irrelevant. It points out its final proposal would not change the wage scale or the City's relative ranking, but would only adjust each employee's step placement within the range. While the Union is correct that external comparisons are not directly relevant to the issue being arbitrated here, the market data serves to confirm that the wages at issue are not out of the mainstream.

The Union argues legitimately that the Employer has an obligation to bargain in good faith with each exclusive representative. The City's desire for consistency in its pay plans does not override that obligation. By itself, an argument that a particular pay scale or employee step placement is consistent with other bargaining units would not persuade the Arbitrator to uphold the City position. To fairly evaluate the two final positions, a broader view is necessary, including information relating to the history between the City and its Unions, the actual increases proposed today, and the future pay progression set forth by the proposals.

The Employer's data show that its current proposal compares favorably with its settlements over the past several rounds of bargaining with this and other Unions. The record also shows there was a significant amount of thought and labor dedicated to the compensation study itself, and to the decisions which followed the study. These included a conscious choice to increase the City's pay scale in order to maintain its health in the long term. Finally, the implementation of the new pay system was bargained with its various Unions. It resulted in no employee suffering a pay reduction. (Testimony of George Gmach, Employer oral argument and brief, tabs 15 & 21)

The end result of this process gives the four Sergeants at issue increases of 3.55% (2007), 6.93% (2008), and 6.81% (2009), including step

movement, which would not have occurred with all employees under the old pay system. As the Employer argues, the new pay plan also allows Sergeants to reach the top of their pay scale in only five years, and earn this higher rate for a significantly longer period of time than was possible under the old system.

The above information establishes that wages resulting from the Employer proposed step placement are reasonable, whether compared to earlier contracts for this unit, to settlements with other Red Wing units, or to surrounding jurisdictions.

The Union argues that the gap between its employees' pay and that of the Fire Captains is unfair. It argues that a trade made at the bargaining table ten years ago, coupled with the method of pay plan implementation, results in an unintended penalty for the Police Sergeants. The current wage difference does appear to be an unintended consequence of these events. The question is whether this wage difference should be eliminated by arbitration.

The Employer rightly argues that the current wage difference between employees in the two units "simply reflects the differences in what each exclusive representative bargained for their members over the years." (Employer brief) The Arbitrator notes that the propriety of 'bargaining' the status of employees as defined by federal or state law, appears questionable. However that issue is not before the Arbitrator for adjudication.

The record shows contractual history between the parties includes payment of overtime to this unit for about six years, during which time the Fire Captains' unit did not receive overtime pay. It includes the addition of shift differential pay (and increases to that differential pay) in the Sergeants' contract, but not in the Fire Captains'. The record also shows the Sergeants

historically had a much smaller wage spread from the first to top steps, than did the Fire Captains. In the course of bargaining there are many deals struck over time which would be impossible to ‘unravel’ in an effort to reach perfect equality between units, even assuming that is an appropriate goal. In any event, under the Employer’s proposal the four Sergeants will reach the top of their pay scale in the next three years, bringing them to parity with the incumbent Fire Captains. If in that period of time new employees are hired in these job classifications, their step placement would be done according to contract language not affected by this arbitration award.

In summary, the employer’s offer favorably reflects equity in internal and external comparisons and assigns grade levels which are fair and undisputed. The only variance between fire and police is transitional and results from historical benefit of the bargain outcomes. To reverse this structure the arbitrator would abrogate the negotiation process.

AWARD

The Arbitrator finds for the Employer. The 2007-2009 contract between the parties will remain in effect as written.

George Latimer
George Latimer, Arbitrator

May 20, 2008
Date