

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

Interest Arbitration

LAW ENFORCEMENT LABOR SERVICES

-and-

B.M.S. Case No. 07-PN-1013

**THE COUNTY OF ANOKA
ANOKA, MINNESOTA**

**Before: Jay C. Fogelberg
Neutral Arbitrator**

Representation-

For the Union: Nick Wetschka, Bus. Rep.

For the County: Scott Lepak, Attorney

Statement of Jurisdiction-

In accordance with the Minnesota Public Employment Relations Act ("Act"), the Commissioner of the Bureau of Mediation Services for the State of Minnesota ("Bureau"), certified eleven (11) issues at impasse in connection with the parties' (new) 2007 Collective Bargaining Agreement, on January 23, 2008. The certification followed a declaration of impasse, and an agreement by the parties to submit the outstanding issues to binding arbitration pursuant to the provisions of

M.S. 179A.16, subd. 2. Subsequently, the undersigned was notified by the Commissioner on March 4, 2008, that he had been selected as the Impartial Arbitrator to hear evidence and arguments concerning the outstanding issues, and to thereafter render an award. A hearing was convened on April 23, 2008, in Anoka. Following receipt of position statements, testimony and supportive documentation, the parties indicated a preference for submitting written summary arguments which were received on May 12, 2008, after which the hearing was deemed closed.

Preliminary Statement-

This matter arises from an impasse that has been certified by the Bureau earlier this year between Law Enforcement Labor Services, Inc., Local 283 (hereafter "LELS," "Union," or "Local") who is the exclusive representative for the County Sheriff's Office Criminal Investigative Unit and Anoka County ("County," "Employer," or "Administration") located in the northwestern portion of the seven county metropolitan area in Minnesota. It is rated as the fourth largest by population, in the state. There are approximately fifteen Investigators that comprise the bargaining unit. The current Labor Agreement covered the calendar

years 2005 and 2006. While the parties entered into good faith bargaining, upon its expiration, and utilized the mediation services provided by the BMS, they were unable to come to an agreement that would have settled all matters and produce a new contract. Accordingly, the following outstanding issues were certified as being at impasse by the Bureau.

The Issues-

1. Duration; Article 30
2. Wages – Amount of General Adjustment 2007
3. Wages – Amount of General Adjustment 2008
4. Wages – Amount of General Adjustment 2009¹
5. Wages – Performance Based Range Adjustment for 2007
6. Wages – Performance Based Range Adjustment for 2008
7. Wages – Performance Based Range Adjustment for 2009²
8. On Call Pay³
9. Specialty Pay
10. Compensation Plan
11. Retiree Insurance

**Issue No. 1
Duration; Article 30**

County's Position: The Employer has proposed a three year term for the new Collective Bargaining Agreement between these parties

¹ This issue is dependent upon the findings and award made relative to Issue No. 1.

² This issue is also dependent upon the findings and award made relative to Issue No. 1

³ At the arbitration hearing, the Union withdrew this issue from consideration.

starting on January 1, 2007, through December 31, 2009.

Union's Position: LELS seeks to retain a two-year term for the new Contract from January 1, 2007 to December 31st of this year.

Analysis: The Employer, as the party seeking to make a change to the existing language in the Master Contract, argues that given the relatively late date of the impasse, and the need for "labor peace" between the two sides, to award a two year agreement after negotiating for over a year and one-half, will provide the Union and the County with only a relatively short break before they would move back to the bargaining table. In addition they have stressed internal equity as being supportive of their final position, noting that of the eight other bargaining units in the County, six have agreed to a three year term, expiring at the end of next year (County's Exs. 6 – 9, 11 & 12).

The Local, on the other hand, cites the bargaining history of the parties whereby the term of the past five agreements has remained constant at two years (Union's Ex., p. 5). In addition, they stress the current lack of significant data for the year 2009 – calling it their "primary concern" - and noting that only one of the comparable counties has a settlement for that year.

The Employer's emphasis on internal consistency, in this particular

instance, is less than persuasive. Arguing that there would be little time to enjoy "labor peace" with the Local, ignores the unrefuted evidence presented by the Union at the hearing, that these parties have experienced a relatively harmonious relationship over the years. It is further noted that probably the most comparable internal bargaining unit for the Investigators is the Patrol Deputies working for the County, and they are covered by a two year contract as well (*id.*). Finally, given the relatively unique nature of the position here in issue, external wage and benefit data is all the more significant. When this evidence is coupled with the ten year consistent history of the parties, I find the Union's position to be the most reasonable.

Award: Accordingly, the length of the new contract shall be for a period of two years, effective January 1, 2007, to December 31, 2008.

Issue Nos. 2 – 7
Wages & Performance Based
Range Adjustments

Union's Position: For the term of the new Agreement, the Union is seeking a 5% general salary adjustment for all steps on the salary schedule, retroactive to the first full pay period in January of 2007, and again in 2008, for all members of the bargaining unit. In the alternative,

should their proposal for the merit pay increases be adopted (Issues 5 & 6) then the Local would propose a general wage increase of 3%, effective January 1st of each year along with a 2% performance-based adjustment to incumbent employees in the bargaining unit. The net effect of the Union's position regarding these issues is a 5% improvement for 2007 and again in 2008.

County's Position: The Employer counters with a general wage increase of 2% in 2007 and in 2008 as well, effective the first full pay period in January of each year. In addition, they are offering a 2% performance-based increase effective the first full pay period in July of each year of the new Agreement.

Analysis: In arriving at what is believed to be a fair and reasoned decision concerning this and the other issues that have been certified at impasse, I have given careful consideration to the applicable provisions of PELRA which requires the reviewing neutral to examine such factors as the obligations of public employers to efficiently manage and conduct their operations within the legal limitations specified, the interest and welfare of the public they serve, the ability of the County to fund any wage increase, the

effect of the respective proposals on the standard of services provided, as well as the ramifications any award might have in connection with other classifications of employees, and the relevant external markets.

In this particular instance, a number of the aforementioned factors are not in dispute. The parties have agreed, for example, that there is no ability to pay issue present here and that an award of either position would not result in any particular economic hardship to the County. Additionally, pay equity is not an issue and an adoption of either position would not put the Employer out of compliance with the Act. While the County negotiates contracts with some nine organized employee groups, they comprise a relatively small portion of the total work force. Of the approximate 1,465 employees in the County, less than 25% are members of a bargaining unit. It has also been demonstrated that all members of the Investigative unit are on the top (5th) step of the established salary schedule, and were hired at that level. Finally, both sides agree that the most relevant external market consists of the counties of Washington, Ramsey, Scott and Dakota, as established in an award authored by this arbitrator well over a decade ago and utilized consistently since then (Union's Ex., p. 144).

Distilled to its essence, the parties are not far apart on their

respective positions regarding wages and performance pay. The Union seeks a total 5% adjustment in each of the two years, and the Employer counters with a 4% increase. While the Local has proposed to adjust all steps without a merit increase by 5% each year, they have couched their final position in terms of either/or. That is, in the event that the performance based increase is retained for the life of the new agreement at 2%, then they request that a 3% general wage increase be awarded in 2007 and again in 2008. The other significant distinction between the two final positions, is the effective date of the merit pay adjustment. The Union asks that, if it is to be retained, then it become effective the first full pay period in January of each year. Conversely, the Administration is offering to continue the performance-based adjustment date effective with the first full pay period in July of each year.

The relevance and weight to be given to internal wage adjustments was clearly the paramount argument advanced by the Employer as support for their position. As pointed out by LELS the 2% increases given to the non-union personnel for 2007 and 2008 was the result of a unilateral decision by the Administration and not arrived at through the bargaining process. The evidence indicates however, that

many of the County's essential and licensed personnel received the same adjustments. The Sheriff's Deputies were awarded a 2% increase in each of the two years by an arbitrator.⁴ In addition to the Licensed Deputies, the Detention Deputies, the Detention Sergeants and Lieutenants, the Licensed Sergeants and Supervisors all settled for the same wage increase in 2007 and again in 2008 (County Exs. 5-10). The lone exception is the Work Release Officers unit, which was awarded a 3% general increase in 2007 (Employer's 14). However, it was demonstrated that the WCOs had been "losing ground" and were behind both nonunion and organized employee groups with the same or similar pay equity points, as well as when compared to external market salaries, thereby justifying the deviation.

I share the view of so many other arbitrators that to render an award for wages based solely upon internal settlement patterns without the application of other comparators, would be a disservice to the parties and, at its extreme, could effectively eliminate the need to bargain over the subject at all. In this instance however, there is compelling evidence that both organized and non-organized County personnel have agreed that a 2% wage increase for calendar years

⁴ *LELS and Anoka County*; BMS Case 07-PN-0910; Employer's Ex. 4.

2007 and 2008 is not unreasonable. Moreover, the arbitrator's award for the Deputies also provides significant support for an adoption of the offer made by the Administration in this regard.

External market comparisons were also addressed by the parties in support of their respective positions, and have been considered here. Without question, compensation paid to employees who occupy comparable positions in relatively close geographic and socio-economic proximity to the employer is most often one of the more persuasive factors considered by the reviewing neutral in an interest dispute such as this. External market comparators are perhaps even more germane when the job involves the relatively unique field of law enforcement.

The Union has argued that even an adoption of their position in connection with the compensatory issues that have been certified, will do little to advance the relative standing of the Investigative Unit vis-à-vis the accepted comparable market grouping (LELS Ex., p. 154-157). They add that the County's proposal will do even less in this regard. Ignored in the Local's argument however, is the fact that in the prior agreement, the parties voluntarily entered into a long-term plan to address the external market disparity for wages. The fact remains

unrefuted that the performance-based range increase program was put into place precisely for the purpose of eventually improving the position of the Anoka Investigative Unit at the top of the wage range, when compared to the other counties that constitute the "market" as agreed upon by the parties. The same step/performance system was put into place for other bargaining units within the Sheriff's Office as well. Under the system, the more senior members of the bargaining unit receive additional compensation in an effort to improve their relative standing. At the same time it was demonstrated that the Employer benefited by having the change occur over a number of years making it more budget-friendly and to allow for greater consistency with their existing merit based system.

The Employer has accurately observed that the only true difference between their final offer and the Union's alternative final offer, as it relates to the merit pay plan, is the effective date. In this regard they maintain that internally the other positions within the County that have a combined step/performance based compensation structure, are the Licensed Deputies and the Detention Deputies. It is noteworthy however, that the 2% merit pay applied to the non-union personnel for 2007 and 2008, became effective in January of each of

those years, rather than July. Significantly, the licensed Sergeants, Supervisors and Detention Sergeants also call for the merit adjustment to take effect at the start of the year, rather than in July.

I am further persuaded by the Local's argument that the Employer's position ignores the fact that unlike other licensed bargaining units, the Investigators have never really been on the "step system." Rather, the weight of the evidence demonstrates that not one of the current employees in the unit was started below the top (5th) step as the lower increments were noncompetitive and the need to attract qualified personnel from law enforcement within the County required that they offer the top rate of pay. I have also been influenced in this matter by the Union's argument that the adoption of the July date versus the January date in essence freezes the performance-based compensation of the bargaining unit membership for six months, the net effect of which is to grant an annual increase of only 1% rather than 2%. In my judgment, a balance of the equities relative to this sub-issue favors the Local's position.

Another factor that has been taken into consideration includes the (County's) argument that they have had little trouble retaining Investigators once they have been hired. The evidence shows that

since 2001, with one exception, the turnover in the bargaining unit has been solely through retirement (County's Ex. 16). The retention of qualified personnel appears to be an absent within the bargaining unit. Moreover, seven of the ten candidates currently being considered for the present openings are internal applicants.

I have also taken into consideration the cost of living standard, and more particularly the Consumer Price Index ("CPI") for the Midwest Urban Consumers. There can be little question but that food and energy costs have escalated significantly in the past few years (Union's Ex., p. 193 – 200). Neither can there be any dispute but that the CPI has been particularly volatile during the same period of time (Employer's Ex. 17). Taking a longer view however, demonstrates that for the six years prior to consideration of the new 2007-2008 Agreement, the members of this bargaining unit received either a two or three per cent general wage increase (totaling some 16% from 2001 to 2006) which was more than the increase in the Midwest Urban CPI during the same period of time (*id.*). Moreover, this analysis does not factor in the additional compensation received through the performance-based adjustments that were agreed to during the prior contract term. In light of this evidence, I cannot agree with the Local's assertion that any award for

compensation less than what they have proposed here will result in an erosion of the bargaining unit members' purchasing power.

Award: Based upon the foregoing analysis, I find that for the term of the new two year contract, a general wage adjustment of 2% shall be awarded for 2007 and an additional 2% in 2008, retroactive to January 1st of each year, together with the retention of the 2% performance-based increase at the range maximum effective the first full pay period of January in each of the two years.

Issue No. 9 Specialty Pay

Union's Position: LELS seeks to add the following specialties to the be covered under the Specialty Pay language currently found in Article 8.14: Computer Forensic Analyst, Video Forensic Analyst, and Polygraph Operator, making each of them eligible for the monthly \$75 stipend in addition to their regular wages.

County's Position: The Employer has proposed no change to the existing provision.

Analysis: It is a commonly accepted axiom of the interest arbitration process, that the party proposing to change an existing provision or provisions in their collective bargaining agreement, or to

otherwise add new language to the contract, sustains the burden of proof to demonstrate through clear and convincing evidence, first the need for such change and then the reasonableness of their proposal. See: *LELS and Crow Wing County*, BMS Case No. 94-PN-1687 (Fogelberg: 3/96). Here, the Union presented the testimony of Detective Larry Johnson who spoke to the added duties and responsibilities that attend one who is trained and assigned forensic video analysis. Furthermore, the Local offered documentation which they maintain constitutes additional responsibilities and expertise for the Computer Forensic Specialist and the Polygraph Operator.

With all due respect to Detective Johnson, the weight of the evidence presented fails to convince me that it would be appropriate at this time to expand the eligibility for premium pay to the three additional specialties identified by the Union. Initially, I would observe that there are no comparators – either internally or externally – to support the Union’s final position on the matter. Indeed, one can make a cogent argument that such specialized duties fall within the expected parameters of the classification itself. In the final analysis I must conclude that there is insufficient justification for the proposed amendment to Section 8.14 at this time. Rather, it is believed that an

issue such as this is best resolved through the bargaining process.

Award: Accordingly, the County's position is awarded.

Issue No. 10 Compensation Time

Union's Position: The Local seeks to add the term "compensatory time" to Article 8.2 to read as follows:

"The normal work week shall be 43 hours per week (2236 hours per year) in a work week. Work hours will consist of hours worked, vacation time used, sick leave used, holiday hours, *compensatory time* and employer training time."

County's Position: The Employer has proposed no change to the existing language found in Section 8.2.

Analysis: As with the previous issue, the burden of proof lies with the Union to demonstrate first the need for the proposed language to be placed into the new contract via the impasse resolution process, and then the reasonableness of their position.

LELS maintains that their proposal constitutes a "technical change" in the Collective Bargaining Agreement as it is nothing more than a codification of an existing practice. Consequently, there would be no impact or change in the status quo should it be awarded.

The evidence shows that internally only two of the nine bargaining

units - the licensed Deputies and Detention Deputies - have such a provision in their respective agreements. Both of these organized groups of employees however, have supervisory duties. As the Employer has pointed out, the other units in the Sheriff's office have no comparable language. Perhaps most significantly there is an absence of sufficient proof of the need for including such language in the new contract. Should the Union wish to have specific wording placed into their labor agreement that reflects the existing practice, then it is best that the matter be resolved through the negotiation process.

Award: The County's position is awarded.

Issue No. 11
Retiree Health Insurance

Union's Position: The Union proposes to include the Anoka County Personnel Policy regarding retiree health insurance effective January 1, 2005 into Section 17.2 of the new agreement. In the alternative, they seek an amendment to the language in the contract referencing the Anoka County Personnel Policy in connection with retiree health insurance, effective January 1, 2007.

County's Position: The Administration has proposed no change to the existing language in Section 17.2.

Analysis: While acknowledging that the County has been responsible and proactive with regard to insurance matters for its employees, the Local nevertheless notes that last year the Administration made a unilateral decision to alter the benefit level it had once provided to all employees. Their proposal would hold the Employer accountable for changing benefits without the Union's input. This, in their view, constitutes ample justification for an award of their final position.

It is clear that the language now found in Section 17.2 contains a "me too" provision, and that any change to the retiree health insurance program as provided in the County's personnel policies during the term of the agreement, are to apply to the Investigators as well. It was demonstrated through argument and supportive documentation that there exists an identifiable need to maintain flexibility in connection with this particular benefit. Statement 45 of the Governmental Accounting Standards Board ("GASB") requires an actuarial review to determine liability for post-employment benefits: who is eligible, how many does it effect, and other relevant information (County's Ex. 18). It also requires the identification of the contributions needed to offset this liability (*id.*). The County noted that this requirement replaced the "pay as you go"

process that only obligated employers offering such a benefit to report their actual costs to the federal government. Accordingly, due to the change in reporting, the Administration needed to formulate a plan to address this new obligation. Hence the change that took place in 2007 which the Union now complains of. While the County first sought to limit the changes to existing employees (those hired prior to 2007) it did not completely solve the problem (Employer's Ex. 20). However, it did limit its application to a defined amount. The partial solution has been applied to the County's non-union personnel and to a majority of the organized employee groups as well. It was also applied to the Inspector unit, but should have little adverse affect as it is comprised of mostly senior personnel.

I am also persuaded by the lack of external comparisons that might otherwise support the Local's position. Indeed, among the comparable counties, the benefit appears to be the exception rather than the rule.

Finally, I have been influenced by the argument and position taken by the Union in the recent interest arbitration involving the Sheriff's Deputies, addressing essentially the same issue (County's Ex. 4). There, they maintained:

"....any efforts [to minimize the financial impact of the benefit] must involve both parties, *and should be the result of collective bargaining*....[T]he County should not be allowed to obtain through arbitration what they were unable to obtain at the bargaining table...." (*id.*, at p. 19; emphasis added).

The same rationale is applicable to the instant dispute.

Award: Accordingly, the County's final position shall be implemented.

Respectfully submitted this 28th day of May, 2008.

/s/
Jay C. Fogelberg, Neutral Arbitrator