

In Re Interest Arbitration Between

**City of Mound, Minnesota
and
Law Enforcement Labor Services, Inc.,**

Decision and Award of Arbitrator

BMS Case No: 08PN1091

**Carol Berg O'Toole
Arbitrator**

August 21, 2008

Representatives:

For the Employer:

**Susan Hansen, Attorney
Kandis Hanson, City Manager
Gino Businaro, Finance Director (Retired)
Catherin Pausche, Finance Director**

For the Union:

**Dennis O. Kiesow, Business Agent
Dan Niccum, Steward**

Appearances:

For the Employer:

**Gino Businaro, Finance Director (Retired)
Catherin Pausche, Finance Director**

For the Union:

Dan Niccum, Steward

Preliminary Statement

The hearing was convened shortly after 9:00 AM at the Mound City Hall offices on Monday, July 14, 2008. The parties involved are The City of Mound (Employer) and the Law Enforcement Labor Services, Inc. (Union), representing the city's police personnel (Union). The parties presented oral testimony, oral argument and exhibits. The arbitrator found the presentation of the respective positions by the Union and the Employer very clear and reasoned and the relationship between the parties mature and generally cordial. The constituencies of each side appeared to the arbitrator to be well served. Post hearing briefs by both parties, postmarked July 31, 2008, were received by the arbitrator. The arbitrator closed the hearing simultaneously with the receipt of the last brief by U.S. Mail on August 2, 2008.

Contractual and Statutory Jurisdiction

The Union is the certified bargaining representative for the city police personnel, in the job categories Police Officer, Investigator/Detective and Juvenile Officer. The Employer and the Union are signatories to an expired collective bargaining agreement (Agreement) covering the period from January 1, 2006, through December 31, 2007. The parties met for negotiations and participated in mediation. All provisions of the Agreement were successfully negotiated except for eight issues.

On April 30, 2008, the Bureau of Mediation Services, State of Minnesota (Bureau), received a written request from the Union to submit contract negotiations to conventional interest arbitration. The Bureau, pursuant to Minnesota Statutes 179.16, subdivision 2, certified the eight issues to arbitration. Pursuant to state statute and Article VII of the Agreement, the parties selected the undersigned arbitrator. The parties timely submitted final positions on eight issues. The Bureau forwarded the Certification to Arbitration and the items in dispute to the arbitrator on May 30, 2008.

Issues

The Bureau certified the following issues to interest arbitration:

1. Insurance--Employer Contribution 2009--Article XVIII, Sec. 1
2. Wages--Wage Rates 2008--Article XXXI, Sec. 1
3. Wages--Wage Rates 2009--Article XXXI, Sec. 1
4. Court Time--Amount of Minimum Compensation--Article XIV
5. Call Back--Amount of Minimum Compensation--Article XV
6. Education Incentive--Amount--Article XXVIII
7. Funeral Leave--Sick/Vacation Credits--Article XXIV
8. Holidays--Pay Rate If Worked--Article XIX, Sec. 3

At the beginning of the hearing, the parties informed the arbitrator that they had settled the 7th issue, Funeral Leave. The Employer withdrew the suggested changes and the parties have agreed not to change the language of Article XXIV, Funeral Leave, in the Agreement

Issue One: Insurance--Employer Contribution 2009--Article XVIII, Sec. 1

Article XVIII, Sec. 1 of the present Agreement reads,

The Employer agrees to pay the full premium for the employee only hospitalization/major medical insurance for each full-time employee from the first of the month following thirty(30) days of continuous employment. The Employer agrees to contribute up to \$750.00 per month in 2006 and up to \$850.00 per month in 2007 toward the cost of family coverage or dependent coverage plus one (1) from he first of the month following thirty (30) days of continuous employment for each full-time employee who elects coverage under this Agreement. Any additional costs for such

family coverage shall be paid by the employee through payroll deduction.

In no event shall the employer's contribution exceed the actual cost of the coverage selected by the employee.

Positions of the Parties

The Union

For 2008, the Employer and the Union agreed on an increase by \$25.00 per month from \$850.00 to \$875.00. The Union states that they accepted the \$25.00 increase because the family health insurance premium increase was low and maintained the historic ratio of insurance costs. The Employer pays the full premium for single coverage.

The Union proposes an increase in the Employer's contribution from \$875.00 to \$950.00 per month, or 50% of the premium increase, whichever is greater, toward the family health insurance premium for 2009. The Union states as a rationale for its proposal, that the first year increase was a low bid by Health Partners. It was a 2.68% increase in premium for the year 2008. The Union expects premium increases for 2009 will be near the Health Partners cap of 16%. They state that the Employer's offer increases the cost only 2.85% over the 2008 cost and that will be insufficient if the cap is reached.

The Employer

The Employer proposes an increase in the contribution to \$900.00 per month in 2009. The Employer argues that the \$900.00 per month will not impact four of the ten members of the Union because they take single coverage which is 100% paid by the employer. The Employer continues that, two of the members carry family coverage, one carries employee plus spouse coverage and the remainder (three) carry employee plus children coverage. Of those six, the Employer argues, only one is enrolled in the

\$1100 Deductible Health Savings Account Plan. Therefore, the Employer argued, the impact of this \$900.00 family health insurance coverage is limited to only six Union members.

The Employer cites a seventeen-year pattern of flat dollar contributions to health insurance premiums. This pattern has been the same for all employee groups since 1992, and, furthermore, was agreed to by the Union for the 2007 increase. The Employer states that the volatility of the health costs is nothing new and the Union agreed to a flat dollar increase in 2005 for the 2007 premium contribution. Finally, the Employer argues that the \$900 contribution would be above the market average when compared to the LOGIS group, through which health care bids are made, and when compared to the Stanton VII Group.

Discussion

The Union position constitutes not only a greater increase than the Employer's position but, more importantly, a different structure to the Employer contribution that provides less fiscal certainty for the Employer. It would substitute a percentage for the current dollar cap. This is a major change in the Agreement which transcends actual cost for one year. To achieve such a change through interest arbitration, the party proposing the change must demonstrate compelling and extraordinary circumstances. I find no such circumstances sufficient to change seventeen years of consistency. Such major changes are better bargained for by the parties themselves.

Award

The Employer's position of \$900.00 for 2009 is awarded.

Issues Two and Three: Wages–Wage Rates 2008–2009 Article XXXI, Sec. 1

Positions of the Parties

The Union

The Union proposed a 4.0% general wage increase and a market adjustment of \$.75 per hour for all wage steps effective January 1, 2008, and a 4.0% general wage increase and a market adjustment of \$.25 per hour for all wage steps effective January 1, 2009. The Union states that wage increases for none of the other bargaining units or group of employees have been determined, so this award will have a significant impact. This group of employees is a male-dominated unit.

The Employer received notice following its 2006 Pay Equity Report that it was in compliance with requirements of the Pay Equity Act, Minnesota Statutes 471.99 *et seq* (Pay Equity Act). The Union argues that the 2006 Pay Equity Report resulted in an underpayment ratio of only 30.8% which was well below the 80% minimum and that the City was able to comply with the Pay Equity Act based on the t-test. The Union argues that the Employer has no established pattern of settlements with its employee groups for 2008 or 2009.

The Union argues that its proposal for a wage increase is appropriate considering the external market conditions. The Union points to two comparison groups: Stanton VII Group; Union Group-Cities with Population of 5,000 -15,000 (Union Group). The Union claims that the League of Cities has discontinued the Stanton VII Group and furthermore, the Employer is at the top of that group in population so the Stanton VII Group it is no longer a good comparison group.

Dan Niccum, the Union Steward, testified that the Union's wage increase is needed and points to a recent loss of a police officer to Minnetonka because of better pay. According to the Union calculations and using the Union Group for comparison, the Union proposal would raise the top wage to \$38.48 below average in 2008 and \$85.52 per month above average in 2009, while the Employer's offer drops the officer's top pay to \$169.22 for 2008 and approximately \$249.85 below average for 2009. The

Union continues that their proposal when compared to the Stanton VII Group places the Employer in seventh position out of twenty cities as opposed to fourteenth out of twenty if the Employer's proposal is awarded.

Finally, the Union states that their request for \$.75/hour market adjustment and 4.0% general increase for 2008 and \$.25/hour market adjustment and a 4.0% general increase for 2009 is reasonable and justified. They state that the Employer is financially sound with a share of property taxes similar to other cities in the state and no foreseeable problems. The Union points to the Employer's general fund balance at the end of 2007 in excess of 2.33 million dollars with total cash and investments in excess of \$10 million dollars.

The Employer

The Employer proposes a 2.5% general wage increase effective January 1, 2008, and a 2.5% general wage increase effective January 1, 2009.

The Employer states that the pay equity arguments of the Union are not relevant to the larger issue. Even if the Union position retains the in-compliance status of the Employer, the Union position will change the pay relationships between the male dominated classification of the Police Officers with the female dominated classes within the City. The Employer states that the wages for the Police Officer classification result in salaries above their predicted pay value by more than \$200 per month.

The calculations put forward by the Union do not include any overtime pay which is substantial. The Employer says that just the step increase on the Police Officers wage schedule is 6.13% and that half of the officers receive step increases. The Employer described the additional dollar items not in the Union calculations, the Health Care Savings Plan and the severance pay benefits. Even without these additional cash benefits, the Employer's final position results in a 2008 maximum salary for Police Officers that is 98.9% of the average maximum salary in the comparison group and a 2009 maximum salary for Police Officers that is 98.6% of the average maximum salary

in the Stanton VII group with West Hennepin and South Lake Minnetonka Police Departments added (Stanton VII Plus Group). The Employer points to the 3.0% increase in 2008 coupled with the 6.13% average increase for those moving through the steps is far in excess of the Consumer Price Index. They also point to the traditional 2.0% to 3.0% wage increases since 1995 as rationale for their position. The Employer also states that it had sufficient applicants for vacant positions so they believe the salaries are competitive. They state that the external comparison suggests that no more than a 3.0% increase is warranted for 2008 or 2009.

The Employer argues that economic factors and the ability to pay warrant a 2.5% increase rather than the more expensive Union position. Both the retired finance director, Gino Businaro, and the current finance director, Catherine Pausche testified as to the Employer's increasingly pessimistic economic factors and lessening ability to pay. The Employer cites levy limits, coupled with decreasing revenues and fees as placing substantial budgetary pressures on the Employer. The Employer's 2008 budgeted expenditures exceeded revenues in the general fund by more than \$300,000 according to Pausche. The Employer argues for economic restraint and cost containment because of the current economic climate and the reduction in the City's resources.

Discussion

Among the items considered by arbitrators in deciding interest arbitration disputes are the requirements of the Pay Equity Act, external market conditions and the Employer's ability to pay as well as internal comparables and bargaining history.

1. Pay Equity Act

The Pay Equity Act has been considered by the arbitrator as is required by law. It is important that any award not jeopardize the Employer's current compliance with the Pay Equity Act. This arbitrator cannot order that the Employer achieve gender balanced police force which may be the quintessential resolution, but a 3% percent increase for each year of the contract does not appear to put the Employer out of balance.

2. External Market Conditions

The parties disagree on what the appropriate group is for external market comparison. The Stanton VII Group has historically been used by both parties, but the firm no longer provides salary data for the League of Cities in the same way. This group included cities between 5,000 and 10,000 in population. The Employer has been near the top of the range previously and is now. The Union states that its group, the Union Group, is a better comparison group as it contains cities between 5,000 and 15,000. The Employer states that a third comparison group, (Stanton VII Plus Group), the Stanton VII, enhanced with two additional employers, West Hennepin and South Lake Minnetonka Police Department, has been used in prior interest arbitration proceedings between the Employer and Law Enforcement Labor Services, Inc. In this Stanton VII Plus Group, the most common pay increase appears to be three percent, albeit a dearth of wage adjustments for 2009. In addition, a three percent increase in both years of the Agreement would not drastically change the City's relative position regardless of which comparison group is used. A three percent increase in 2008 and 2009 appears to meet the considerations of the external market comparisons. Finally, from the evidence presented at the hearing it is likely that the parties might have reached a similar wage agreement through negotiations.

3. Employer's Ability to Pay

Although the Employer's current financial status as evidenced by the revenues in the general fund and the unreserved fund balance is appears sound, the outlook for the next two years is of greater concern. The pessimistic outlook for the period this award covers cannot be ignored. The general recession in the state, including particular elements such as home foreclosures, return on investments, revenue from licenses and fees and unemployment, makes the likelihood of fiscal pressure for the Employer a very important consideration. A three percent increase is an increase above what the City last offered but not quite the increase the Union suggested. It is a common increase

among the Stanton VII Plus Group and appears to retain the relative standing of the police officers among comparable cities.

Award

The Employer shall prepare a general wage increase of 3.0% in 2008 and a 3.0% in 2009.

Issues Four: Court Time—Amount of Minimum Compensation—Article XIV

Article XIV of the parties Agreement provides:

An employee who is required to appear in court during his/her scheduled off-duty time shall receive a minimum of two (2) hours pay at one and one-half (1 ½) times the employee's regular base pay rate. An extension or early report to a regularly scheduled shift for court appearances does not qualify the employee for the two (2) hour minimum.

Positions of the Parties

The Union

The Union proposes the current minimum compensation be raised from two hours to three hours for an employee who is required to appear in court during scheduled off-duty time. They argue that a court appearance regardless of duration requires the same preparation time, including dressing in a uniform.

Dan Niccum testified that minutes are important because day care providers charge by the minute (sometimes with a minimum) so police officer costs are going up. He stated that this provision affects night officers the most. They have to go in mid-day and this requires passing up recreational activities. The Union states that the majority of other comparable law enforcement agencies pay a three hour or more minimum. The Union introduced a "Stanton Group Six and Seven" comparison to prove their point.

The Employer

The Employer states that court time has been the same since at least 1995 and the instances in which a police officer is required to make a duty-related court

appearance during off duty time have generally remained the same. They argue that the present language in the agreement is reasonable and appropriate under the circumstances.

The Employer argues that there are internal reasons to retain the language. No other city employee receives a minimum of three hours at time and one-half the base rate of pay for court time. Further, they argue, sergeants who are also represented by the LELS, have agreed to the two hour court time for their 2008-2009 collective bargaining agreement. Therefore, it is important to retain the status quo.

The Employer argues that the greatest number of comparable police departments pay at the current rate in the Agreement, that is, a minimum of two hours. They offer in evidence the Stanton VII Plus Group which show a preponderance of two hour minimums. Finally, they say that it is rare to call officers back now as two higher DWI arresters no longer work for the City and new officers don't produce at the same rate.

Discussion

Although parties frequently attempt to gain structural changes in the collective bargaining agreement in interest arbitration, such changes should be gingerly awarded in only rare circumstances. Those circumstances should be compelling and extraordinary. None exist here. A new or greatly modified provision of the collective bargaining agreement should be achieved through the normal give and take of collective bargaining at the table. The present court time minimum compensation appears to be internally warranted and externally the most commonly paid in the cities to which the Employer has most frequently compared itself.

Award

The position of the Employer to retain the current language of the Agreement for minimum for court time is awarded.

Issue Five: Call Back–Amount of Minimum Compensation–Article XV

The Agreement provides:

An employee who is called to duty during his/her scheduled off-duty time shall receive a minimum of two (2) hours pay at one and one-half (1 ½) times the employee's regular base pay rate. An extension or early report to a regularly scheduled shift for court appearances does not qualify the employee for the two (2) hour minimum.

Position of the Parties

The Union

The Union argues many of the same points as it did in arguing for enhanced court time reimbursement in its efforts to increase the call back time generally. In both the Stanton VII cities and the Union Group, two cities have a greater call back time than the present Agreement's two hour minimum. The Union argues that an increase is justified because such call backs require the same time and preparation as a regular shift, days off are extremely important and a call back interrupts plans for the day. They argue further that costs to the police officers, such as day care and commuting, have increased.

The Employer

The Employer argues that the City police officers are rarely called back, that the rate of pay is historic and that external comparison are favorable for the two hour minimum.

Discussion

As said before, although parties frequently attempt to gain structural changes in the collective bargaining agreement in interest arbitration, such changes should be gingerly awarded in only rare

circumstances. Neither compelling nor extraordinary circumstances exist here. A new or greatly modified provision of the collective bargaining agreement should be achieved through exchanging proposals at the collective bargaining table. The present call back time minimum compensation appears to be internally warranted and externally the most commonly paid in the Stanton VII Plus Group as well as the Union Group.

Award

The position of the Employer to retain the current language of the Agreement for call back pay is awarded.

Issue Six: Education Incentive—Amount—Article XXVIII

The Agreement provides:

If funds are not provided by any other governmental agency, the Employer shall pay cost of tuition equal to that charged by state institutions after them employee has successfully completed a course with a grade of “C” or better. The course must be approved in advance by the city Manager. Upon completion of the course, the employer will pay the employee a one (1) time payment of five dollars (\$5.00) for each credit hour the employee earned.

Positions of the Parties

The Union

The Union proposes no change in the language of the Agreement for educational incentive. The Union argues that the Employer has not changed the educational benefit for non-law enforcement employees, is an infrequently used provision of the contract and that the provision is historical, negotiated prior to the 1987-88 agreement.

The Employer

The Employer proposes changes in the education incentive because tuition cost have increased and the present language is uncapped. They have proposed similar language for the interest arbitration involving the sergeants who are represented by LELS. They argue that the Employer's proposal is significant compared to the five other cities who provide tuition reimbursement in the comparison group. In that group, the reimbursement rates range from \$500 to \$1600.

Discussion

The current language of the Agreement is generous compared to the Stanton VII Plus Group, but it was negotiated by the parties themselves. Generosity, all by itself, does not constitute compelling and extraordinary circumstances, especially when one considers the infrequent use of the benefit.

Award

The position of the Union, to retain the current language of the Agreement for educational incentive, is awarded.

Issue Eight: Holidays–Pay Rate If Worked–Article XIX, Sec. 3

The provision in the current agreement provides:

Employees who work any of the above-listed holidays shall receive a cash payment of two (2) times his/her regular base pay.

Positions of the Parties:

The Union

The Union again proposes no change in the language of the current Agreement which provides for a cash payment of double time the regular base rate for working holidays. The Union argues that the present premium pay is very important to law enforcement employees because most police officers work at least half of the holidays. The reasonableness of retaining the present double time provision is illustrated by comparing the current Public Works employees' rate of pay at three and one-half times the regular rate of pay. Finally, the Union states that the present language of the

contract should be retained as it was negotiated prior to the 1987-8 agreement and no *quid pro quo* has been offered by the Employer for this major reduction in holiday pay.

The Employer

The Employer argues that the present double time rate of pay for those police officers that work holidays is above and beyond the market average. The Employer argues that the majority of cities in the Stanton VII Plus group, provide payment for holiday hours at the rate of one and one-half times the regular base pay rate. Finally, the Employer argues that this proposal is consistent with the changes they are seeking with the sergeants' unit.

Discussion

The current language of the Agreement is generous compared to the Stanton VII Plus group but it was negotiated by the parties themselves. Generosity, all by itself, does not constitute compelling and extraordinary circumstances. The Union is correct when it argues that there must be a *quid pro quo* for a major reduction in benefits.

Award:

The position of the Union to retain the current language of the Agreement for working holidays is awarded.

Dated: August 21, 2008

Carol Berg O'Toole
Arbitrator