

**IN THE MATTER OF INTEREST ARBITRATION BETWEEN**

**Law Enforcement Labor Services, Inc. Local 254**

Union

and

**BMS Case No. 08 PN 0127**

**City of Stillwater, Minnesota,**

Employer

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**NAME OF ARBITRATOR:** Bernardine Bryant  
Assistant Faith Latimer

**DATE AND PLACE OF HEARING:** August 14, 2008  
Stillwater, Minnesota

**BRIEFS RECEIVED:** September 2, 2008

**DATE OF AWARD:** September 30, 2008

**APPEARANCES**

**FOR THE UNION:** Len McFarland, Business Agent, LELS  
Local 254  
Sergeant Dave Roettger, Stillwater Police  
Department

**FOR THE EMPLOYER:** Susan K. Hansen, Attorney  
Frank Madden & Associates  
Larry D. Hansen, City Administrator,  
City of Stillwater

## **INTRODUCTION**

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. 179A.01-30. Law Enforcement Labor Services, Inc (Union) is the exclusive representative for the Police Sergeants employed by the City of Stillwater (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 some but not all provisions. On December 4, 2007 the Bureau of Mediation Services certified the following issues for interest arbitration:

- 1. Wages-Wage Increase 2007-Appendix A**
- 2. Wages-Wage Increase 2008-Appendix A**
- 3. Wages-Wage Increase 2009-Appendix A**
- 4. Health Insurance-Health Insurance-Article 21**
- 5. Post Retirement-HCSP-Art. 21**
- 6. Court Time-Court Time-Art. 14**
- 7. Holiday-Premium Holiday Pay-Art. 18.4**
- 8. Longevity-Longevity-Appendix B**

Prior to Arbitration, the parties resolved issues number 4 through 8. The remaining issues, wage increases for the years 2007, 2008, and 2009, were submitted to the Arbitrator. Hearing was held August 14, 2008. Both parties had full opportunity to submit documents and examine witnesses. Written closing briefs were received by the Arbitrator on September 2, 2008, and the record was closed.

## **FINAL POSITION OF THE UNION**

Issue #1 2007 Wages: A general wage increase of 5% over 2006 rates.

Issue #2 2008 Wages: A general wage increase of 5% over 2007 rates.

Issue #3 2009 Wages: A general wage increase of 5% over 2008 rates.

## **FINAL POSITION OF THE EMPLOYER**

Issue #1 2007 Wages: A general wage increase of 3% effective January 1, 2007.

Issue #2 2008 Wages: A general wage increase of 3% effective January 1, 2008.

Issue #3 2009 Wages: A general wage increase of 3% effective January 1, 2009. A general wage increase of 0.25% effective July 1, 2009.

## **Union Position**

The Union argues that all four of the traditional standards used in interest arbitration, favor its position. First with regard to ability to pay, the Union asserts the City is in very sound financial health. It points out that in December 2006 the City had a general fund unreserved fund balance of approximately \$3.7 million, which was 45% of the total general fund expenditures, and that the City's bonded debt had decreased that year by 8%. The same year, the City's total estimated market value on residential property went up 11.5%. (Union notebook, December 31, 2006 Comprehensive Annual Financial Report) The Union argued in its brief that the 2008 audit done by Larson Allen & Co found the City's finances to be in good condition. The Union believes the cost difference between the Employer's final wage proposal and its own is less than \$45,000. The Union points out this amount would be a 'drop in the bucket' of the City's budget and would have no impact on the State Auditor's recommended amount to be held in unreserved funds.

Second, with regard to market comparisons, the Union relies on data comparing the Stanton Group VI, defined as suburbs with populations of 10,000 to 25,000 residents. Stillwater fits within this comparative group with a population of approximately 18,000 residents. Excluding jurisdictions which do not have their own police departments, the Union's market comparison group consists of the following cities: Anoka, Champlin, Chaska, Columbia Heights, Crystal, Farmington, Forest Lake, Golden Valley, Hastings,

Hopkins, Lino Lakes, Mendota Heights, Mounds View, New Brighton, New Hope, North St. Paul, Northfield, Prior Lake, Ramsey, Robbinsdale, Rosemount, Savage, South Lake Minnetonka, South St. Paul, West St. Paul, and White Bear Lake. (Union Notebook, External Equity tab) The Union argues that the Stillwater Sergeants' salary level is below the average of this group, and that by granting the City wage proposals this would move the unit even lower in relative standing. Ranking the jurisdictions by top Sergeants' pay, the Union's data places Stillwater 18th of 27 jurisdictions in 2006. In 2007, the Employer's proposed 3% increase would place Stillwater in the 21st position, while the Union's proposal would move it to 14th position. In 2008, the Employer's proposal would place Stillwater in the 19th of 25 jurisdictions reporting, while the Union's proposal would move Stillwater to 9th of 25 jurisdictions. While there is salary data for only eleven of the jurisdictions for 2009, the Employer's proposal would appear to place Stillwater at the 10th of 12 settlements, while the Union's proposal would place it 4th of 12 using ranking comparisons. (Union notebook, External Equity tab)

The Union asserts the average salary increase for cities in Stanton Group VI is 4% for each of the three years. Further, it argues that Stillwater ranks in 8th place among the Stanton VI Group in terms of crime rates per 1000 residents, and in 5th place in the number of crimes cleared by arrest. Therefore, the Union claims its relatively low salary levels are not proportionate to work load. The Union claims other economic forces such as Readex Citizens Survey, Minnesota BCA Uniform Crime Report, Money Magazine Best Places to Live, and data from the Minnesota Department of Revenue Sales and Use Report all justify its wage proposal. The Union argues its position is further justified by Stillwater's high rank with respect to such measures as median income, home sale price, and property tax. (Union notebook, External Equity tab)

The third factor the Union addresses is internal comparisons. The Union argues first that nearly half of the City's union employees have not yet settled their contracts, and therefore no internal pattern exists. It also argues that in 2005 the City granted market rate adjustments to eight of eleven of its department heads. The City's reason for doing this was to compete with other cities of similar size for retention of employees. The Union asserts the same logic should apply to the Sergeants unit, which should

receive a similar increase relative to comparable cities. (Union notebook, Ability to Pay tab)

The final factor the Union addressed is cost of living. It cited data indicating that consumer prices are up 5% over the past twelve months, the highest jump in seventeen years, reflecting large increases in energy and food costs. As support for its argument, the Union submitted payroll data from one of its employees which showed his take home pay has decreased from 74% of his gross in year 2001, to 63% of his gross salary today. Employees in this unit are now bearing about 36% of the cost of health insurance compared to about 26% in 2001 (exact figures depend on the particular plan). Along with increases in other costs, the effect for employees is that their wage increases lag behind their expenses. (Testimony and payroll records of Sgt. Dave Roettger)

For all the reasons enumerated, the Union argues its wage proposal of 5% increases each year of the contract is needed and appropriate.

### **Employer Position**

The Employer argues the State's economic outlook has a large impact on local units of government, including the City of Stillwater. Specifically, there have been dramatic declines in the amount of local government aid provided to Stillwater by the State. Because of these declines, while the city relied on property taxes for only about one-third of its revenue in 2001, it now derives about two-thirds of its revenue from property taxes. In addition, the 2008 Minnesota legislature has imposed levy limits on local units of government, which means Stillwater's additional levy will generate only \$37,421 in 2009. The City points out it has already added user fees and other fees to its revenue stream, such as a franchise fees added to utility bills. This means the City's ability to raise more funds through fees is limited. (Employer Exhibits 12, 16, & testimony of City Administrator, Larry Hansen)

Contrary to Union arguments that Stillwater is experiencing robust growth, the Employer argues more recent data indicates otherwise. Recent downturns in the general economy and in residential building meant Stillwater saw growth in residential property values of only 1% last year. In addressing the question of the City's unreserved fund balance, the Employer points out these balances are used to pay operating expenses for

the first half of the following year. While the Employer acknowledges its general fund balance is adequate, at about 46% it is only “acceptable” by State Auditor standards. This compares to many municipalities with much higher fund balances. (Employer brief and Ex. 17 & 18) City Administrator, Larry Hansen testified that in recent years the City has laid off one employee, eliminated other positions by attrition, and currently has a hiring freeze in place.

The Employer estimated the additional cost of the Union’s wage proposal is approximately \$51,500. The Employer's costing of the Union’s proposal includes the additional costs of payroll taxes and PERA contributions. While the Employer states it would be able to pay this cost, it asserts this may require other City staffing reductions. (Employer brief, Ex 33 and testimony of City Administrator Larry Hansen)

The Employer agrees that Stanton Group VI is an appropriate comparison group, with the exception of the City of Farmington which should be excluded from the comparison group. It argues Farmington is very different from others in the group in at least three ways: it has experienced unusually rapid population growth (about 60% in the last several years), the police force is not unionized, and its pay structure has nine steps to the top, an unusually long salary progression. (Employer brief)

The Employer points out that Stillwater's Sergeants are paid full or ‘top’ pay immediately upon appointment to the Sergeant position. After excluding Farmington from the comparison group, the average time for sergeants in the comparison group to reach top pay is 2 years. The Employer argues this has to be taken into account in making salary comparisons. For example, the Employer’s data indicates that in 2006, Stillwater is 7.8% above the average starting salary in Stanton Group VI, and 0.9% below the average at the maximum salary. If the Employer's proposed 2007 increase is granted, Stillwater's Sergeants move to 9.2% above the average starting wage, and 0.6% below at the average top wage. In 2008, the Sergeants’ would be 7.9% above the average starting wage, and 1.7% below the average salary at the top. The Employer argues these numbers show Stillwater's Sergeants have competitive salary levels. It further argues its proposal for 3% increases is appropriate, since a 3% increase is common among the Stanton Group VI cities. (Employer Ex 37, 38 & 39)

While the Employer believes its proposal is reasonable and competitive relative to its comparison group, it maintains that the standard of internal consistency is the more important standard to use in rendering a decision. It argued that maintaining an internal pattern of wage adjustments is fair, and results in more stable labor relations within the City. At this point in time, the City has settled collective bargaining agreements with AFSCME, the Firefighters Association, Teamsters Local 320 Public Managers Association, and Operating Engineers Local 49. These agreements apply to sixty six employees which represents three fourths of the City workforce. The wage increases for these groups is consistent with the Employer's proposal for the sergeants. In response to the Union's argument concerning market adjustments for city managers, the Employer stated that these adjustments occurred only when the managers' pay levels were between seven to nine percent below the market rate. The City Administrator is currently paid 14% below market rate and this is clearly not the case with Stillwater's Sergeants market rate.

The Employer also pointed out that when overtime pay is included, sergeants already potentially earn more than their supervisor, the Police Captain, and, one sergeant did earn more than the Captain in 2006. Granting the Union's proposed pay increase would exacerbate the wage compression which already exists between Sergeants and the Police Captain. (Employer brief and Ex 32A & B)

Finally, the Employer argued that future compliance with the Pay Equity Act is a matter of concern. This bargaining unit is not a gender-balanced class. The class is assigned 382 points in the job evaluation system and the Sergeants already earn a wage above the predicted pay level for this number of points. Since there are female dominated classes in the City assigned a comparable numbers of points, awarding a greater wage increase to the Sergeants raises potential problems with future compliance. (Employer brief and Ex 31)

Moreover, the Employer argues that an arbitration award for a salary increase greater than what other bargaining units have agreed to discourages good faith bargaining. It encourages essential bargaining units to 'roll the dice' on interest arbitration as a substitute for conventional bargaining, and could create greater costs through a whipsaw effect with other bargaining groups.

With respect to the Union's arguments on cost of living increases, the Employer points out that some of the increases affecting sergeants have also affected costs to the City such as large increases in PERA contributions and health insurance costs. Further, these increases affect other employees as much as the sergeants, which further supports the Employer's argument for the importance of internal consistency.

### **Arbitrator Analysis**

With respect to the Employer's financial condition, the parties naturally emphasized different views of the same picture. The City wants to conserve as much of its financial resources to retain an adequate or better general fund balance and maintain internal equity with wage increases. The Union emphasized Stillwater's relative affluence especially regarding the City's general fund balance and its ability to pay and the Sergeants need to keep pace with inflation and maintain a competitive salary position with other similar police units.

For its part, the Employer has general concerns regarding two negative trend lines that have occurred. One trend has been the significantly decreasing State support for local units of government. The other concern is the general economic condition of the State and the negative trend in economic activity affecting Stillwater, including residential building and property values.

In reviewing the evidence and testimony, the Arbitrator gave careful consideration to: 1) ability to pay 2) pay equity compliance 3) internal equity 4) external comparison group data 5) other economic and market issues.

### ***Ability to Pay***

The Arbitrator agrees that the Employer's figure of \$51,500 reasonably represents the three-year total cost difference between the two parties' proposals. The Employer, in its testimony and exhibits, did not claim an inability to pay argument but did present testimony and evidence to support the fact that levy limits and decreased revenue streams have placed new-found budgetary pressures on the Employer.

It was undisputed that the Employer is operating with an approximate forty six per cent unreserved fund balance. And, neither parties wage proposals would leave the

Employer outside the State Auditor's acceptable fund balance range. The Arbitrator gave careful consideration to the City's general fund, the primary operating fund for the City, the obligations of the Employer to conduct their operations within the legal limits, and the interest and welfare of the public they serve. Considering these facts and the other budget information of record, the evidence and testimony suggests that a salary increase above the Employer's proposal would not affect their ability to pay and would not cause serious harm to the general fund balance.

### ***Pay Equity***

The City of Stillwater received notice of its compliance with pay equity in 2007 from the former Commissioner of D.O.E.R. (Employer Ex. 31). The Union testified that the Employer would remain in compliance using their wage proposal scenarios as outlined in the pay equity section of their notebook. The next pay equity report for the Employer is due in 2009. It is not certain what the computer generated report will indicate at that time. Given the unknowns regarding the pay equity considerations, the evidence presented is not persuasive enough to conclude that a salary increase above the Employer's proposed wage increase would cause them to become out of compliance. Therefore, pay equity considerations are not significant enough to not consider other factors in determining an equitable wage award.

### ***Internal Comparability***

Internal comparisons are worthy of consideration and the Arbitrator is mindful of the fact that a wage increase for one unit more generous or less generous than that received by other City employees might well have a negative impact on morale and uniform labor relations. The City argues that internal consistency should be a primary deciding factor since it has salary settlements with three fourths of the City workforce. However, each bargaining unit is different, and many different factors affect the outcome of collective bargaining agreements. A wage award based primarily on internal consistency above all other factors would be contrary to the spirit of PELRA and the responsibility of both parties to bargain in good faith. Likewise, many other arbitrators have determined that while internal comparisons are important in interest awards those

comparisons should not be controlling in every case.

### ***External market***

Arbitrators generally recognize that external marketplace relationships should be considered in evaluating wage proposals, especially given the unique duties and responsibilities of each unit. Both parties agreed on the essential parameters of the relevant Stanton Group VI comparison group. The Stanton Group VI represents suburban communities with populations of 10,000 to 25,000 residents. However, the Employer makes persuasive arguments for why the City of Farmington should be excluded from the group for wage comparisons particularly noting its 9 step pay structure which is clearly exceptional within this comparison group. The Union's data includes Savage. Savage is not included on the Employer's list, perhaps because the City of Savage grew beyond the 25,000 population limit for Stanton Group VI. Even with the exclusion of Farmington and Savage, data presented by each of the parties does not lend itself to precise 'apples to apples' comparisons. The Arbitrator excluded the Cities of Farmington and Savage for purposes of analysis of external market data.

In analyzing the data submitted it appears the Union rounded wage increases to annualized numbers, while the Employer included split year calculations for the cities of Chaska, Hastings, Hopkins, New Brighton, Robbinsdale, Rosemount, and South Lake Minnetonka. The parties used significantly different 2007 figures for at least two cities with large wage increases (Forest Lake and West St. Paul). If one applies the Union's larger figures to 2007, the resulting average annual wage increases appear to be approximately 4 ½%, 3 ½%, and 3 ½%, rather than a 4% per year average as per the Union data and the 3% increase the Employer asserts as common amongst the group.

However, given the large number of jurisdictions included in the Stanton VI comparison group, the discrepancies do not create a dramatic impact in average salaries and ranking. Further analysis of the comparison group expressed in averages (excluding Farmington and Savage), indicates that Stillwater Sergeants are currently paid below, but very close to the average maximum salary (0.4% below for 2006). The Employer's proposals for the three years of the contract would place Stillwater at 1.84% below the average, 2.4% below the average, and 3.2% below the average, respectively.

Expressed in terms of rank, again excluding Farmington and Savage, Stillwater ranks 15 out of 24 jurisdictions in top pay for year 2006. The Employer's proposal would place the sergeants at 18 out of 25 jurisdictions in 2007; 16 out of 23 jurisdictions in 2008; and, 12 out of 13 jurisdictions reporting in 2009. Using the Stanton ranking based on maximum salary, Stillwater Sergeants are in the lower half of the comparison group. However, the Arbitrator recognizes the fact that Stillwater sergeants have one salary level when appointed to sergeant. Since there is only one salary level, comparing the wage to the starting wage, Stillwater Sergeants rank near the top of the comparison group. The Employer rightly points out that the other bargaining units take an average of two years to reach the top salary. (Employer Ex. 37- 40) Note: The evidence presented does not reveal seniority breakdown for the comparison group.

Using the Stanton Group VI as the appropriate comparison group along with other economic factors, the Arbitrator recognizes that communities within that group have significant differences that influence police contract settlements. In the case of the City of Stillwater, the demands placed on police in a jurisdiction which is clearly rated a tourist destination with a very significant tourist trade especially during the summer months adds another dimension to the work load. This fact was supported by the Union's evidence regarding the high rates of 'Part II' crimes committed in Stillwater relative to others in Stanton Group VI. (Union external equity tab, BCA uniform crime report data) This fact does lend credence to the Union's argument that its salary position should be higher in relative placement in the comparison group.

While not controlling, the Arbitrator also gave note to the current CPI data, hiring stability of the unit and the evidence submitted as to Stillwater's relative affluence. The City of Stillwater ranks near the top of the comparison group in terms of median income, home prices, and property taxes, the major funding source for the police department.

Considering all of the evidence, testimony and arguments presented by the parties and an evaluation of all the economic factors that were considered, the analysis of the external market comparison justifies that for 2007 some upward adjustment of this bargaining unit's relative wage position is appropriate. At this time, however, being aware of the very uncertain economic conditions now facing the Employer, the Arbitrator awards the Employer's proposal for the 2008 and 2009 years of the contract.

**AWARD**

APPENDIX A 2007 WAGES A general wage increase of 4% over 2006 rates, effective January 1, 2007

APPENDIX A 2008 WAGES A general wage increase of 3% over 2007 rates, effective January 1, 2008

APPENDIX A 2009 WAGES A general wage increase of 3% over 2008 rates, effective January 1, 2009. A general wage increase of 0.25% effective July 1, 2009.

Bernardine Bryant

Arbitrator

Date: September 17, 2008