

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION)
))
 between))
))
 City of Brainerd, Minnesota))
) BMS Case No. 08-PN-0816)
 -and-))
))
 Law Enforcement Labor Services,))
 Inc., Local No. 65 (Police))
 Officers)))
)) October 6, 2008)
)))))))

APPEARANCES

For City of Brainerd, Minnesota

Thomas A. Fitzpatrick, Attorney, Brainerd, Minnesota
Dan Vogt, Administrator
John Bolduc, Police Chief
Kris Schebert, Human Resources Coordinator

For Law Enforcement Labor Services, Inc., Local No. 65

Nick Wetschka, Business Agent
Ray McCollum, Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 65
(hereinafter referred to as the "Union") is the certified
bargaining representative for 20 full-time essential licensed
Police Officers employed by the City of Brainerd, Minnesota
(hereinafter referred to as the "City" or "Employer").

The City and Union (hereinafter referred to as the
"Parties") are signatories to an expired contract that was
effective January 1, 2006, through December 31, 2007.

RECEIVED BMS-

The Parties entered into negotiations for a successor collective bargaining agreement. The Parties negotiated and mediated, but were unable to resolve all of the outstanding issues. As a result, on April 4, 2008, the Bureau of Mediation Services (BMS) received a written request from the Union dated April 2, 2008, to submit the unresolved issues to conventional interest arbitration. On April 10, 2008, the BMS determined that the following items were certified for arbitration pursuant to M.S. 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Duration - Length of Contract - Article 24
2. Wages - Amount of General Adjustment in 2008 - Article 9.1
3. Wages - Amount Of General Adjustment, If Applicable - Article 9.1
4. Longevity - Amount Of Increase - Article 9.2
5. Shift Differential - Amount Of Increase - Article 9.3
6. Sick Leave - Amount Of Increase To Deferred Compensation - Article 14.2

The Parties selected Richard John Miller to be the sole arbitrator from a panel submitted by the BMS. A hearing in the matter convened on August 20, 2008, at 10:00 a.m. at the Brainerd City Hall, 501 Laurel Street, Brainerd, Minnesota. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. The Parties

agreed to keep the record open until August 27, 2008, in order to resolve any external comparability data disputes, and also to provide the backup data concerning the longevity benefit provided to City employees. The Parties submitted this information in a timely manner. Pursuant to the statute and the agreement of the Parties, post hearing briefs were electronically submitted on September 12, 2008, and exchanged electronically by the arbitrator on September 13, 2008, after which the record was considered closed.

Following submission of the final positions to BMS and prior to the arbitration hearing, the Parties resolved Issue #5, Shift Differential, and Issue #6, Sick Leave, as it applies to deferred compensation. Accordingly, those issues are not in dispute in this arbitration.

ISSUE ONE: DURATION - LENGTH OF CONTRACT - ARTICLE 24

POSITION OF THE PARTIES

The City proposes a one-year collective bargaining agreement from January 1, 2008, through December 31, 2008. The Union proposes a two-year collective bargaining agreement from January 1, 2008, through December 31, 2009.

AWARD

A one-year collective bargaining agreement from January 1, 2008, through December 31, 2008.

RATIONALE

The record establishes that all seven previous collective bargaining agreements, covering the last twelve years, have been two-year agreements, indicating that past bargaining history favors a two-year agreement. However, there are justifiable reasons to break from this pattern and award a one-year agreement.

Police sergeants are in a separate supervisory unit represented by Teamsters Local No. 346. Virtually all other City employees are unionized. They are represented by International Brotherhood of Electrical Workers or the International Union of Operating Engineers. In total, there are seven certified bargaining units for the 146 City employees. The six other unions covering virtually all other City employees have contracts that expire on December 31, 2008, which would be the exact date of the expiration of a one-year agreement in the case of Police Officers. By having the contract duration period end on the same day for virtually all City employees places all employees on the same "playing field" for negotiations of successor collective bargaining agreements.

Another reason for a one-year contract is that there is no internal wage comparability data for 2009 or beyond, as none of the unions have reached settlement with the City.

The Parties agree that Brainerd compares with these thirteen other Minnesota cities: Albert Lea, Bemidji, Cloquet, Elk River, Fairmont, Fergus Falls, Hutchinson, Marshall, New Ulm, North Mankato, Northfield, Red Wing and Willmar. The City also submits that Brainerd compares with Hibbing which has in past bargaining been a comparable city for its market studies. The Union, on the other hand, argues that Hibbing should be eliminated from the comparability group because Hibbing has retiree health insurance which the Union alleges is a quid pro quo in lieu of higher wages. In addition, rather than relying on a standard step advancement, Hibbing uses a series of promotions to move up its pay scale to top pay. While there are noted differences between Brainerd and Hibbing, these differences do not disqualify Hibbing from being a comparable, as Hibbing and their differences have been in the market study for many years without apparent dispute between the Parties. Consequently, Hibbing is comparable to Brainerd.

Unfortunately, there is limited external wage comparability for 2009 for police officers, as the majority of the comparable cities have not reached agreement with those employees. In fact, only six of the fourteen comparable cities have reached wage settlements for 2009 (Bemidji, Fergus Falls, Hibbing, North Mankato, Red Wing and Willmar).

Finally, a one-year agreement make better sense for both Parties due to the economic uncertainties in our economy which were apparent at the time of hearing and have escalated in recent weeks and days. No one knows with any certainty in what financial condition our national, state and local governmental bodies will be in 2009 or in subsequent years, and if that will have a trickle down effect on the financial condition of the City.

**ISSUE TWO: WAGES - AMOUNT OF GENERAL ADJUSTMENT IN 2008 -
ARTICLE 9.1**

POSITION OF THE PARTIES

The City proposes a wage increase of 3% for 2008 effective January 1, 2008. The Union proposes a wage increase of 3% for 2008, plus a 1% market adjustment effective January 1, 2008.

AWARD

A wage increase of 3% for 2008 effective January 1, 2008.

RATIONALE

The legislature has established standards that interest arbitrators must use when resolving wage and salary issues. They are internal equity; budget considerations; the market and purchasing power.

In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation

relationship standards established in this section and the standards established under section 471.993, together with other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study.

M.S.A. 471.992, Subd. 2 (2002). These standards apply in the instant case because the classification of Police Officer is male-dominated, as that term is used in the pay equity law.

In addition to equitable compensation relationships, the standard referred to above requires the arbitrator to consider the extent to which:

Subd. 1

- (1) compensation for positions in the classified civil service, unclassified civil service, and management bear reasonable relationship to one another;
- (2) compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivision's employment; and
- (3) compensation for positions within the Employer's work three bear reasonable relationships among related job classes and among various levels within the same occupational group.

Subd. 2 Reasonable relationship defined. For purposes of subdivision 1, compensation for positions bear "reasonable relationship" to one another if:

- (1) the compensation for positions which require comparable skill, effort, responsibility, working conditions, and other relevant work-related criteria is comparable; and
- (2) the compensation for positions which require differing skill, effort, responsibility, working conditions, and other relevant work-related criteria is proportional to

the skill, effort, responsibility, working conditions, and other relevant work-related criteria required.

Minn. Stat. Sec. 471.993 (2002). The arbitrator focused his decision on many of the same required statutory criteria - internal equity, external equity, ability or willingness to pay and the consumer price index (CPI).

As noted previously, the City has seven certified bargaining units, including the Police Officers. Since 2003 all of the City's bargaining units have settled for the same percentage wage increase other than in 2006. In 2006, the City did a market study using the comparable cities and, as a result of this study, made market adjustments to certain non-union supervisory employees and to the unionized supervisory sergeants, represented by Teamsters Local No. 320. These market adjustment were necessary in order to increase the wages of those designated City employees, so that their wages would become more competitive at or near the market averages of the comparable cities which has been the goal of the City for all of its employees, whether organized or not.

For 2008, all City employees, whether organized or not, received a 3% wage increase. Thus, the issue arises over whether Police Officers are deserving of a market adjustment (1% as proposed by the Union), in addition to a wage increase of 3%

which was granted to all other City employees. The Union argues that the City's final offer of 3% would drastically reduce the City's goal of being competitive at or near the market averages of the comparable cities.

The evidence produced by the Union establishes that in 2006 the City was 1.82% behind the wage average at the maximum salary of the comparable cities for Police Officers and 3.35% behind for 2007. Under the City's proposed wage increase of 3% the Police Officers would be 3.63% behind the wage average at the maximum salary of the comparable cities for 2008. Under the Union's proposed general wage increase of 3%, plus 1% market adjustment (4% general wage increase), the Police Officers would be 2.63% behind the wage average at the maximum salary of the comparable cities for 2008.

While the Union's data is accurate, it does not tell the entire story. This data shows only the relationship at the maximum salary for the Police Officers among the comparable cities. The entire story also needs to show the relationship of the maximum salary of the Police Officers when longevity is included, since longevity is simply another form of salary compensation. With the City's offer of 3%, at \$4,620 per month, Brainerd is only \$11 behind the average of the comparable cities for 2008 when longevity is included. Clearly, there is no need

for a market rate adjustment in the instant matter. The City is well positioned in the external market.

In addition to considering maximum salaries with longevity, a review of the 2008 wage settlement average among the comparable cities is also relevant. All of comparable cities have settled for 2008. The average 2008 wage increase for this comparability group is 3.08% which compares more favorable to the City's wage offer of 3% than the Union's wage offer of 4%.

There is no evidence that the 3% wage award will take the City out of compliance with pay equity. In fact, even the Union's final offer of 4% would not take the City out of pay equity compliance.

While neither of the Parties' positions will take the City out of compliance with pay equity, the pay equity report demonstrates that Police Officers are not underpaid relative to other City positions. To the contrary, the City's submission to DOER in January of 2008 clearly establishes that Police Officers are well paid compared to other City employees. In fact, Police officers are being paid above the pay equity "predicted pay" line.

This pay equity report covers all positions in the City, and ranks them from bottom to top by job points. With 71 job points, the position of Police Officer ranks 29th out of the 68 City

positions. However, in both starting and maximum salary, this job pays more than every higher ranked position up to the GIS/IT Coordinator which has 76 job points placing it 41st on the list. When the fact that the Police Officer position is eligible for longevity while the GIS/IT Coordinator is not, only makes the internal wage disparity even greater.

The CPI for July 2008 is 6.6%. Obviously, the Union's position of a wage increase of 4% would be closer to the CPI than the City's offer of 3%. However, it should be noted that all other City employees, along with the average of the comparable cities, are faced with the same CPI, but yet settled for a wage increase of 3%. While the CPI is a consideration, it carries less weight than the internal and external comparability data received into evidence.

**ISSUE FOUR: LONGEVITY - AMOUNT OF INCREASE - ARTICLE 9.2
POSITION OF THE PARTIES**

The City's position is that there should be no change to the longevity benefits as set forth in Article IX, Wages, Section 9.2 of the contract as follows:

After 8 years of service	2% of Top Wage
After 12 years of service	3%
After 16 years of service	3.5%
After 20 years of service	4%
After 24 years of service	4.5%

The Union's position is as follows:

9.2. The following longevity schedule will be effective
January 1, 2008

After 8 years of service	2% of Top Wage
After 12 years of service	3%
After 16 years of service	4%
After 20 years of service	5%

AWARD

The Union's position is sustained.

RATIONALE

A universally recognized goal of interest arbitration is that benefits should be consistent among all employees employed by the governmental subdivision. In fact, the City extends this argument to even wages and duration, where it argued the importance of being consistent with regard to all of its employees for pay and duration purposes to promote labor harmony. The Arbitrator accepted the City's logic and arguments, as it applies to wages and to duration and, accordingly, there are no persuasive reasons to not continue this same methodology to this issue.

Longevity pay is an internal benefit and, as such, should be consistent throughout the City. However, the City has a different - more generous longevity schedule for the City Administrator and Department Heads. The Union's position matches that longevity schedule except for the first step of "after 4

years - 1%." Thus, the Union's position is less costly to the City because it eliminates the "after 4 years - 1%" step.

The evidence establishes that other unionized City groups have the same longevity pay schedule as is currently contained in Article 9.2, and none have the longevity pay schedule as proposed by the Union. However, if it is the City's intent to treat all City employees equally for wages and duration, whether unionized or not, it logically follows that Police Officers deserve the more generous longevity pay schedule being administered to the City Administrator and Department Heads.

Because the City does have two different longevity benefits there is no labor harmony. In fact, the subject of longevity and the inequities among employee groups lead the Parties to their last arbitration. Law Enforcement Labor Services v. City of Brainerd, BMS 02-PN-660 (2002) (Kircher, Arb.). At that time Arbitrator Kircher stated the Parties must negotiate a structure change with regard to longevity pay. The Parties have managed to negotiate that change, however a small inequity still exists. The Union's position should be awarded to fix that inequity.

While the City points out that only six of the comparable cities offer any longevity benefit at all, it is important to note that no other city in the comparability group has a

different longevity schedule for their city administrator and department heads.

The cost to the City to implement the Union's position is no more than approximately \$1,800. This is quite affordable and, moreover, closes the gap between wages and longevity paid to Brainerd Police Officers in comparison to comparable cities.

As always is the case, both Parties are to be complimented on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written briefs.

Richard John Miller

Dated October 6, 2008, at Maple Grove, Minnesota.