

IN THE MATTER OF ARBITRATION )

INTEREST ARBITRATION

between )

City of Apple Valley, )  
Minnesota )

-and- )

Law Enforcement Labor Services, )  
Inc., Local No. 71 (Police )  
Officers) )

BMS Case No. 08-PN-1039

October 20, 2008

))

**APPEARANCES**

**For City of Apple Valley, Minnesota**

Frank J. Madden, Attorney, Frank Madden & Associates, Plymouth,  
Minnesota  
Dawn Strauss, Human Resources Manager  
George Ballenger, Finance Director  
Michael Marben, Police Captain

**For Law Enforcement Labor Services, Inc., Local No. 71**

Jack Chambers, Business Agent  
James Gummert, Police Officer  
Nic Wolf, Police Officer  
Greg Dahlstrom, Police Officer  
Brain Bone, Police Officer

**JURISDICTION OF ARBITRATOR**

Law Enforcement Labor Services, Inc., Local No. 71

(hereinafter referred to as the "Union" or "LELS") is the  
certified bargaining representative for 38 full-time essential  
licensed Police Officers employed by the City of Apple Valley,  
Minnesota (hereinafter referred to as the "Apple Valley", "City"  
or "Employer").

RECEIVED BMS-

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.

The Parties entered into negotiations for a successor collective bargaining agreement. Agreement was reached between the Parties on a duration of two years (2008 and 2009) and a general wage increase of 3% for 2008. The Parties negotiated and mediated, but were unable to resolve two of the outstanding issues. As a result, on June 5, 2008, the Bureau of Mediation Services (BMS) received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On June 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. Wages - Wage Increase For 2009 - Appendix A
2. Uniforms - Uniform Allowance 2008 & 2009 - Article 23

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 September 10, 2008, at 9:00 a.m. in the Regent Conference Room at the City Municipal Center, 7100 West 147th Street, Apple Valley, 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 September 16, 2008, in order to resolve any disputes over external comparability data presented by the Parties during the arbitration hearing. On September 16, 2008, the City submitted documentation noting certain errors in the Union's wage data.

Pursuant to the statute and the agreement of the Parties, post hearing briefs were submitted by regular mail on October 3, 2008.

The Parties also mutually agreed to submit a copy of the arbitration decision rendered by Arbitrator Andrea Mitau Kircher on October 3, 2008, relating to the interest arbitration involving the City and LELS (Sergeants Unit) for 2007, 2008 and 2009. This was received by the Arbitrator on October 10, 2008, after which the record was considered closed.

**ISSUE ONE: WAGES - WAGE INCREASE FOR 2009 - APPENDIX A  
POSITION OF THE PARTIES**

The City proposes a 2.5% general wage increase for 2009. The Union proposes a 5.0% general wage increase for 2009.

**AWARD**

A 3.25% general wage increase for 2009.

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

The state of our economy is an important factor especially in recent times where the stock market and other financial institutions have suffered serious setbacks. It is, however, unknown at this time whether those setbacks will have negative implications on the financial condition of the City for 2009.

The Union's requested 5.0% general wage increase for 2009 totals \$116,940, without roll-up costs. The City's proposed 2.5% general wage increase for 2009 totals \$58,476, without roll-up costs. The awarded 3.25% general wage increase for 2009 totals \$76,176, without roll-up costs.

The roll-up costs to the City would include payroll taxes, PERA contributions in the amount of 14.1% in 2009 and FICA which amounts to 7.65%. Based upon City's calculations, which includes roll-up costs, the cost of the Union's position is \$86,324 more

than the cost of the City's position. Thus, the lingering issue is whether the City can afford the awarded amount in light of its current financial condition.

The City has developed a very unique and proven approach to their finances. While the state's financial condition has deteriorated and the City's Local Government Aid has been reduced dramatically over the last ten years by \$3 million, the City chose not to rely or count on state aid to the City. This has served the City well, as their fund cash balance is just over \$10 million. This amount is necessary and adequate to fund the City's operating expenses for six months until they receive the first property tax payments in May and the second in October.

The 2008 legislative session resulted in levy limits of up to a 3.9% increase over the previous year's levy for the 2009, 2010 and 2011 budgets. Building permit activities and new construction has slowed significantly in the City. This has resulted in a decrease in fees and other revenues associated with new construction. Yet, despite this levy limit, coupled with decreasing revenue and fees, the cost of the wage award does not in any way, shape or form jeopardize the financial condition of the City in light of its cash fund balance and the fact that their projected revenues will offset any expenditures for 2009. Clearly, the City has the financial ability to fund the awarded

wage of 3.25% without impacting upon the services provided to their citizens.

Internal equity is an important consideration in this case based upon Minnesota's Local Government Pay Equity Act (hereinafter "Pay Equity Act"). "In an interest arbitration involving a class other than a balanced class, the arbitrator shall consider the equitable compensation relationship standards established by this section...together with other standards appropriate to interest arbitration." Minn. Stat. § 471.992 Subd. 2. The legislature has charged the Department of Employee Relations (DOER) with the responsibility of ensuring compliance with the Pay Equity Act. Minn. Stat. § 471.9981.

In order to ensure compliance with the Pay Equity Act, the legislature requires jurisdictions to file reports every three years. DOER has developed computer software to statistically measure equitable relationships and determine if a given jurisdiction is in compliance. DOER, Guide to Understanding Pay Equity Compliance and Computer Reports, at page 1 (2007). Based upon the results of the computer analysis of each jurisdiction's report, DOER makes the determination of whether or not the jurisdiction is in compliance with the Pay Equity Act.

The latest computer analysis dated, August 8, 2008, shows the City is in compliance with the Pay Equity Act. The Union

also provided evidence showing they will remain in compliance if the Union's proposed wage increase of 5.0% is awarded.

Consequently, the City would be in compliance under both the wage award of 3.25% and the City's position of 2.50%, which are both less than the Union's position. Thus, the wage award and the Parties' positions have no adverse effect on the City remaining in compliance with the Pay Equity Act. The City will remain in compliance with the Pay Equity Act under the wage award.

There are four employee groups in the City. Three of the groups are unionized and the fourth is non-union. The three unionized groups include the Police Officers, represented by LELS, the Police Sergeants, represented by LELS and the Maintenance Employees, represented by AFSCME.

There were no internal settlements for 2009 at the time of the arbitration hearing. There, however, was a pending interest arbitration decision between the Police Sergeants and the City that was not rendered at the time of this arbitration, but was later rendered after the Parties submitted their post hearing briefs, but before the Arbitrator rendered his decision in this matter. The Parties mutually agreed to submit that decision rendered by Arbitrator Andrea Mitau Kircher on October 6, 2008.

The importance of Arbitrator Kircher's award cannot be overlooked or taken lightly. To the contrary, consistency in

wage increases among all employee groups is of great importance in maintaining labor relations stability in the jurisdiction. In fact, the City has historically negotiated a uniform pattern of general wages increases between all employee groups between 1995 and 2008.

Arbitrator Kircher adhered to this pattern by awarding the same wage increases for 2007 (3%) and 2008 (3%) for Police Sergeants that were granted to all other employee groups for those years. Arbitrator Kircher also rendered a decision for 2009 for the Police Sergeants which granted them a 3.25% wage increase.

Arbitrator Kircher is an experienced interest arbitrator. She is well-respected by this Arbitrator and well-chosen by parties throughout the state. The Arbitrator reviewed her decision and must conclude that based upon the evidence before her the wage award of 3.25% for Police Sergeants was justified and appropriate. As a result, the Arbitrator will not deviate from the pattern of internal wage consistency which has existed since 1995. To maintain internal consistency, the appropriate wage increase for Police Officers, like Police Sergeants, is 3.25% for 2009.

This wage award also achieves another goal, as it will not exacerbate any compression problems between the Police Officers

and Police Sergeants. The historical 25.5% wage differential between the Police Officer and Police Sergeant classifications will be approximately maintained under the same wage awards for both groups.

While internal comparability has been the predominant consideration and driving force in determining the appropriate wage increases for all employee groups in the City, the Arbitrator must also consider the external marketplace to ascertain whether the 3.25% wage increase is within the mainstream of other comparable cities.

Historically, DCA Stanton conducted and published annual wage surveys of jurisdictions in the state. These wage surveys utilized seven comparison groups, and Apple Valley has historically been included in DCA Stanton Group V. This comparison group was approved by Arbitrator Bard in a prior interest arbitration proceeding between the City of Apple Valley and LELS, BMS Case No. 86-PN-530 (1986) and by Arbitrator Kircher in her recent award.

The City proposes to compare itself to the Stanton Group V cities, minus the City of Eden Prairie. The Union contends that all of the cities in Stanton Group V should be considered comparable cities. The City seeks to delete Eden Prairie because it has no unions and is one of the highest paid

cities in the state. The City's proposal would be contrary to the opinions of the other two interest arbitrators and, therefore, is not warranted in this case. This comparability dispute, however, is of little importance in this case since Eden Prairie is not a city that has granted pay increases for 2009. In any event, the Arbitrator has followed arbitral precedent and has not deleted Eden Prairie from DCA Stanton Group V, where data is available.

This unit has fallen from their ranking of second in 1996 to sixteenth in 2008 at the maximum salary. There are only 13 cities out of 25 cities in DCA Stanton Group V that have settled for 2009 which tends to skew the results. In any event, this unit will be approximately at the same ranking in 2009 as in 2008, depending on the remaining settlements of the comparable cities for 2009. It should be noted, however, for 2008 an Apple Valley Police Officer's maximum salary with the inclusion of the 12% Master Police Officer program payment exceeds the average maximum salary with the inclusion of incentives paid at the comparison cities by at least \$100 per month. Further, the average percentage increase for the comparable settled cities is within the mainstream of the wage increase of 3.25%.

Many arbitration awards have granted wage improvements based, in part at least, on the application of the cost-of-living

standard. The CPI is used as an indicator of inflation and as an escalator for income payments.

The CPI from the U.S. Department of Labor shows the U.S. Cities average increase in the cost of living at 4.6% for the first half of 2008. The average for Midwest Urban Cities for the same period was 4.5%. Inflation shows no sign of abating. The U.S. Cities average for the 12 months ending July 2008 was 6.2%. The Midwest Urban Cities average was 6.1% for the same time period.

The increase in the CPI is considerably greater than the 2.5% wage increase offered by the City for 2009. The continual rise in the CPI and the increased cost for food and gas supports the wage ward of 3.25%. While the Union argues that their position of 5.0% would better offset the increase in the CPI, it must be remembered that the settled cities for 2009, along with City's Police Sergeants, are under the same CPI conditions and constraints and they will receive wage increases less than the CPI increase.

**ISSUE TWO: UNIFORMS - UNIFORM ALLOWANCE 2008 & 2009 - ARTICLE 23  
POSITION OF THE PARTIES**

The Union is proposing to increase the uniform allowance from \$775 in 2007 to \$800 in 2008 and \$825 in 2009. The City is opposed to any increase in the uniform allowance.

**AWARD**

The Union's position is sustained.

**RATIONALE**

Historically, Police Officers' uniform allowance has been lower than the Police Sergeants' uniform allowance. The Police Officers' uniform allowance has historically been \$25 to \$50 less than the Police Sergeants' uniform allowance. Certainly, maintaining internal consistency between the Police Officers and the Police Sergeants has been a goal and practice of the Parties and one that will not be disturbed by the Arbitrator.

Arbitrator Kircher noted in her recent decision with respect to the Police Sergeants the following:

From 2000-2005, the parties agreed that the sergeants' unit should receive \$25.00 per year more than the patrol for an annual uniform allowance. For 2006, the differential between the two units increased to \$50.00. Based on this bargaining history, I will reinstate the 2000-2005 internal pattern, a \$25.00 differential favoring the sergeants, by granting no increase for 2007 and 2008, and a \$25.00 increase for 2009.

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Based upon her decision, and adhering to the Parties' practice of maintaining internal consistency between the Police Officers and the Police Sergeants, the Union's position should be sustained. This award grants a \$25 differential favoring the Police Sergeants.

There are additional considerations, other than the internal consistency argument, to award the Union's position. First, the Police Officers have not received a uniform allowance since 2005, while the CPI and uniform costs have increased to the present. Second, the cost to the City is only \$1,900. Finally, externally Apple Valley is behind the average of the comparable cities. The DCA Stanton V group average for 2008 is \$779.08 and \$807.50 for 2009 based upon the Union's data for Police Officers' uniform allowance.

The City presented evidence that indicates the uniform allowance for Police Officers exceeds the average uniform allowance in the comparison group by \$77 in 2008 and \$45 in 2009. It should be noted, however, that the City's data contained uniform allowances for detectives, plainclothes officers, investigators and SROs in addition to regular police officers. The inclusion of those classifications, other than police officers, tend to skew the results, since the other classifications are provided with less money to purchase their uniforms or plainclothes. The best comparison is the uniform allowance provided to police officers only rather than the inclusion of those other classifications.

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.



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Richard John Miller

Dated October 20, 2008, at Maple Grove, Minnesota.