

IN THE MATTER OF ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICES, INC.)	OPINION AND AWARD
LOCAL NO. 257)	
)	
AND)	BMS CASE NO. 08-PN-0266
)	
THE CITY OF STILLWATER)	INTEREST ARBITRATION

.....

ARBITRATOR: Charlotte Neigh
HEARING: September 11, 2008
POSTHEARING BRIEFS RECEIVED: October 6, 2008
AWARD: October 31, 2008

REPRESENTATIVES

For the Union:

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For the Employer:

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JURISDICTION AND PROCEDURE

In accordance with the Minnesota Public Employment Labor Relations Act (PELRA), Charlotte Neigh was selected to arbitrate this matter and the Commissioner of the Minnesota Bureau of Mediation Services certified the issues to be arbitrated. A hearing was held in Stillwater, at which time both parties had a full opportunity to offer evidence. By agreement of the parties, posthearing briefs were postmarked by October 2nd, and the record was closed upon their receipt.

ISSUES CERTIFIED AT IMPASSE

1. Wages - Salary Schedule General Increase 2007 - Appendix A
2. Wages - Salary Schedule General Increase 2008 - Appendix A
3. Wages - Salary Schedule General Increase 2009 - Appendix A
4. *Longevity - Longevity 2008 - Art. XXII*(WITHDRAWN
5. *Longevity - Longevity 2009 - Art. XXII*BY THE PARTIES)
6. Court Time - Court Time Increase to Minimum - Art. XIII
7. Holidays - Designated Holidays For Paid Holidays - Art. XVIII
8. Investigator - Investigator Differential 2007 - Appendix A
9. Investigator - Investigator Differential 2008 - Appendix A
10. Investigator - Investigator Differential 2009 - Appendix A

BACKGROUND

The City of Stillwater has a population of nearly 18,000; it has 92 employees, 26 of whom are in the police department. LELS represents 16 police officers and, in a separate bargaining unit (BU), five sergeants. AFSCME Council 5 represents 30 clerical employees; the Firefighters Association represents seven; IUOE Local 49 represents 18 public works employees; Teamsters Local 320 represents 11 in the management or department head classification. The City Manager is the only non-union employee. The BUs other than the two in the police department agreed to wage increases of 3% in 2007, 2008, and 2009, and an additional .25% in July 2009.

The sergeants BU submitted the wage issue to arbitration, seeking increases of 5% in each of three years. On September 30, 2008, the arbitrator awarded an increase of 4% for 2007, 3% for each of the following two years, with an additional .25% in July 2009.

Local No. 257 comprises the essential employee classifications of police officer, juvenile officer, investigator, and narcotics officer. The parties reached impasse on some of the issues and they proceeded to binding interest arbitration.

ISSUES NO. 1, 2 & 3 - WAGE RATES 2007, 2008, 2009

UNION POSITION

The Union seeks a general increase to the wage schedule as follows:

- 2007 - 4% + \$32/month
- 2008 - 4% + \$65/month
- 2009 - 4% + \$90/month

CITY POSITION

The City's position is to increase the wage schedule by 3% in each year, with an additional increase of .25% in July 2009.

UNION ARGUMENTS

The Union argues that:

- Interest arbitration should be viewed as the replacement for a strike, and should reflect the agreement that the parties would have reached to end a strike.
- The City has adequate resources and can easily afford to pay the Union's requested wage increase. Only one City employee has been laid off. The general property tax levy has been increased. The 2007 audit shows an ample unreserved fund balance in the general fund available for spending at the City's discretion.

Union Arguments (continued)

- An internal equity analysis supports the Union's position because: compliance with the Pay Equity Act would be sustained; and internal consistency is lacking. The City extensively utilizes "market adjustments" along with "colas" for general wage increases. In 2007 five employees received more than a three percent wage increase.
- Comparisons should be made with the external market because: PELRA and pay equity require it; many arbitrators have the goal of retaining historical differentials within the comparison group; and maintenance of the status quo requires an award of the Union's position.
- The general state of the economy is affecting the cost of living and if the CPI upward trend continues, the employees will lose purchasing power.

CITY ARGUMENTS

- The increase in the cost of living has affected all of the City's employees; nevertheless, 76% of them agreed to the 3% wage increase.
- The Union has proceeded to impasse arbitration because it has nothing to lose and everything to gain. If the Arbitrator grants anything beyond the City's final position, it would undermine the collective bargaining process, lead to whipsaw bargaining, and encourage the bargaining unit to use interest arbitration in the future, destroying labor relations stability in the City.

Regarding ability to pay, the City argues that:

- The current economic recession must be given considerable weight in considering the City's ability to pay the Union's requested wage increase. Local government aid from the state has been dramatically reduced, increasing the reliance on property taxes, but the ability to replace lost state aid has been restricted by a state-imposed 3.9% limit on levy increases for 2009, 2010 and 2011. In 2009 the City is limited to \$37,421 additional revenue from its levy. The City's revenues in 2007 were \$600,967 less than budgeted, largely due to declining license and permit fees. All of this places substantial budgetary pressures on the City.
- In order to save costs and balance the budget, the City has laid off an inspector, replaced a janitor's position with a part-time cleaning contractor, and left unfilled a high-level management vacancy. A hiring freeze has been in place since March 2008, resulting in not replacing a public works employee who resigned in 2008, and an intention to leave vacant the public works superintendent position when the occupant retires in January 2009.
- The City budgeted for its proposed wage increases for 2007, 2008, and 2009. An award in excess of the City's proposal will require additional personnel cuts. The three-year cost of the Union's proposal would be \$241,789.50 more than the City's position. This is more than claimed by the Union because it failed to include the automatic "roll-up" costs for taxes and pensions.

City Arguments re: Ability to Pay (continued)

- The City's unreserved fund balance at the end of 2007 was within the range that is "acceptable" to the state auditor, for funding at least five months of operating expenses before revenues were received in 2008.

Regarding internal consistency, the City argues that:

- Consistency among all employee groups is important for labor relations stability. In recent years the primary factor relied upon by interest arbitrators in deciding wage issues has been internal consistency with the settlements negotiated with other bargaining units in the same jurisdiction and the wages set for non-union employees.
- The pattern established by the other BUs in the City is evidence of what this BU would have agreed to if they had negotiated to a voluntary resolution, which is what an interest arbitrator should try to ascertain.
- Deviating from the internal pattern is justified only when wages for a particular group are significantly below the market average. The City gave market adjustments for five single-incumbent management positions because their wages at the top step were 3.2% to 9.7% below the market average. These adjustments did not bring the salaries up to the actual market average. That BU also agreed to a *quid pro quo* by reducing the wage at the first step by 5%.
- The police officers BU is not in the same situation as these management positions. The City's proposal results in a 2007 maximum salary that is 99.1% of the average in the comparison group; in 2008 it would be 98.6%. The Union's proposal would result in exceeding the market average and it has not offered any *quid pro quo* for its proposed salary increase.
- Although the Union asserts that awarding its position will not negatively affect compliance with the Pay Equity Act, its effect would not be known until the state determines whether or not the City is in compliance. The compliance tests are highly sensitive and wage adjustments can cause a jurisdiction to fall out of compliance. This is why public employers place priority on maintaining uniform compensation systems. The police officer class is already paid \$303.82/month above predicted pay. Even if awarding the Union's position does not cause non-compliance, it would change the pay relationships with the female-dominated classes.

Regarding external comparisons, the City argues that:

- This BU's wages are competitive within Stanton Group VI, the established comparison group. The City's position would give a maximum salary that is 99.1% of the 2007 group average, and 98.6% of the 2008 average. A three percent increase, or less, is common among the comparison cities for all three years.
- Another component of market comparisons is attraction and retention, which is not a problem for the City. When police officers leave, it is to go to larger departments with more promotional opportunities.

ANALYSIS AND DISCUSSION RE: WAGES

The City correctly points out that interest arbitrators generally seek to ascertain the likely point at which the parties would have reached agreement through successful, good-faith negotiations. This is difficult enough, without trying to divine what it would take to end a strike, as the Union urges. In this case, the fact that four of the five other BUs have agreed to the City's proposal suggests that it was reasonable enough for them to accept it rather than to go on strike. However, the police officers had the option of binding arbitration, which requires consideration of: ability to pay; internal equity; external market comparisons; and cost of living.

The parties agree that Stanton VI (metropolitan area cities with populations of 10,000 to 25,000) is the proper comparison group. The City correctly points out that not many in the comparison group have had an increase larger than 3% for the years at issue.

Comparison of top pay for the Stillwater police officers as a percentage of the group average:

- 2001-98.38% • 2002-98.71% • 2003-99.59% • 2004-99.39% • 2005-99.51% • 2006-99.36%
- Result of the 3% increase proposed by the City: 2007-99.1%; 2008-98.6%
- Result of the Union's proposal: 2007-100.7%; 2008-102.4%
- The City's offer for 2007 and 2008 would not lower the percentage to the previous low of 98.38% in 2001.

The percentages for 2009 cannot be precisely calculated because not all of the comparison cities have settled on their wage rates; the calculation is also complicated by the City's offer of an additional .25% effective 7/1/09. Using the known numbers as of 1/1/09, the City's offer would position this BU at 97.79%; the Union's proposal would position it at 104.23%. The City's additional .25% in July 2009 might slightly improve the percentage, depending on amounts to be set for other cities.

The Union has offered no justification for such a significant improvement in this BU's historical position. On the other hand, the City's proposal causes this BU to gradually slide to a lower percentage of the group average. The question becomes whether the other factors justify this slide.

Weighting of factors in interest arbitration has shifted since pay equity compliance has become an intrinsic part of collective bargaining. Previously, wage comparisons with similar jurisdictions commonly served as guidance. In recent years interest arbitrators are more inclined to value internal consistency in the size of wage increases, and to require some compelling reason to deviate from it.

The Union has offered no guidance regarding when a deviation is warranted. Nor has it offered any compelling reason for deviating in this case. The fact that the award in the sergeants case included a 4% increase for 2007 does not necessarily support a similar outcome in this case because of significant differences: the additional cost was considerably less; apparently there was no claim that layoff(s) would result; the percentage increases in the comparison group were larger; and the City's proposal would have left the sergeants as much as 3.2% below the group average in 2009.

Analysis and Discussion re: Wages (continued)

The City justifies deviating for the five management employees based on their lagging from 3.2% to 9.7% below the market average for their positions. The City has effectively conceded that a deficit of 3.2% is sufficient to justify a market increase, but the deficit for the police officers under the City’s proposal would not be that great, based on the known numbers for 2009 in the comparison group.

Although the members of this BU have been experiencing a decrease in purchasing power in the current economic downturn, that is true for all employees of the City and does not justify deviating from the internal pattern.

The City has demonstrated good reason to be concerned about its financial condition now and in the foreseeable future. Although the City does not absolutely deny an ability to pay, it has shown serious budgetary constraints. Moreover, the City Manager testified that granting the Union’s position would result in the layoff of additional employees. The Union has not presented reasons sufficient to deviate from the increases for other City employees.

AWARD

ISSUE NO. 1

3.0% general wage increase effective January 1, 2007

ISSUE NO. 2

3.0% general wage increase effective January 1, 2008

ISSUE NO. 3

3.0% general wage increase effective January 1, 2009

0.25% general wage increase effective July 1, 2009

ISSUE NO. 6 - COURT TIME INCREASE TO MINIMUM

EXISTING CONTRACT - ARTICLE XIII

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

UNION PROPOSAL

Increase the court time minimum to three hours.

CITY POSITION

Retain the current language.

UNION ARGUMENT RE: COURT TIME

- External comparisons are the most important factor in determining a benefit unique to law enforcement. Twenty-one of the twenty-six comparison cities receive more than two hours for court time. The City has been internally inconsistent on this issue. Previous arbitrators for these parties have stated that external comparisons should be used for this issue.
- The police officers have received less compensation for court time than the sergeants over ten years, creating unequal bargaining friction. Although this change would give the officers more time than the sergeants get, the historical lack of internal parity voids any internal comparison.
- The numbers in the comparison group have changed since previous arbitrators considered this issue, with the number of cities having greater court time growing from four to twenty-one.

CITY ARGUMENT

- Payment of a two hour minimum at one and one-half times the regular base pay is sufficient and consistent with the marketplace.
- This rate has been maintained back to at least 1999. The number of instances in which this situation arises has generally remained the same over time; this demonstrates that the current provision is reasonable and appropriate.
- The City tries to minimize the disruption and inconvenience to an officer who is subject to being called to court during off-duty time.
- The two-hour guarantee results in payment of three hours wages, which costs more than the City receives on a typical speeding ticket.
- Sixteen of the comparison cities have not increased their minimum since 1999. Therefore the external comparison is supportive of no increase.

ANALYSIS AND DISCUSSION

A City exhibit shows that the court time minimum for the sergeants was increased from 2 to 2 1/2 hours in 2003; their CBA continues to provide for 2 1/2 hours. An increase to 3 hours was an issue certified for the sergeants' recent interest arbitration but was withdrawn before it reached the arbitrator.

In 1999 an interest arbitrator denied an increase to the minimum for the police officers, noting that the two-hour minimum was "in accord with the majority of the comparable jurisdictions". In 2004 the police officers asked an arbitrator to increase their minimum to 2 1/2 hours, arguing for internal consistency with the sergeants. The arbitrator declined to do so, stating that: internal consistency is not so important regarding an item peculiar to law enforcement officers; and the external comparison showed that almost 70% provided only a two-hour minimum.

Analysis and Discussion (continued)

Given that two previous arbitrators directed this Union to rely on an external comparison, which now supports a three-hour minimum, it should be granted. Although the data in the record are not adequate to compute the cost of this item, the City has not claimed an inability to pay.

AWARD

The language of ARTICLE XIII - COURT TIME shall be changed to:

An employee who is required to appear in court on their scheduled off-duty time shall receive a minimum of three (3) hours pay at one and one-half (1-1/2) times the employee’s base pay rate. An extension or early report to a regular scheduled shift for court appearances does not qualify the employee for the three (3) hour minimum.

ISSUE NO. 7 - DESIGNATED HOLIDAYS FOR PAID HOLIDAYS

EXISTING CONTRACT - ARTICLE XVIII - HOLIDAYS

- 18.1 Employee shall be entitled to eleven (11) paid holidays per year.
- 18.2 Any employee required to work on any of the following holidays shall be granted an additional one-half (1/2) times the employee’s base pay rate in addition to regular pay and holiday pay for the entire shift in recognition of said holiday.

New Year’s Day	Martin Luther King Day	President’s Day
July 4th	Memorial Day	Labor Day
Veterans Day	Thanksgiving Day	Christmas Day
- 18.5 Immediately preceding the 1st anniversary date of employment the employee shall be entitled to one additional floating holiday without holiday pay.

UNION PROPOSAL

Add two holidays to §18.2 - Day After Thanksgiving and Christmas Eve.

CITY POSITION

Retain the current language.

UNION ARGUMENT

- There is no internal pattern with respect to holiday pay. Or if there is a pattern, it is for compensation for work performed on these two holidays; at least three of the six BUs in the City receive additional compensation on these two days. The pattern is to provide overtime compensation in addition to holiday pay - or a total of double time and a half for all hours worked on a holiday.

Union Argument re: Holidays (continued)

- This situation is similar to 1999 when an interest arbitrator agreed that Veteran's and Memorial Days should be added to the days qualifying for premium pay because all other hourly City employees were so entitled.
- More than 50% of the cities in the comparison group provide premium pay for all hours worked on these two holidays.

CITY ARGUMENT

- The sergeants BU was also seeking to add these two days to expand the number of holidays qualifying for premium pay but this issue was withdrawn after it was certified to arbitration.
- The law enforcement units at the City have not traditionally had these two holidays designated as qualifying for premium pay.
- The external comparison supports the City's position.

ANALYSIS AND DISCUSSION

Most City employees, including the police officers, are provided with 11 paid holidays, plus one floating holiday. This means the employee receives a day's pay for a designated holiday although the employee does not work. The public works employees have an additional one-half day designated for Christmas Eve.

Although the law enforcement employees are entitled to payment for 11 designated holidays not worked, the issue arises as to which designated holidays that are worked should be paid at a premium rate (hereafter premium holidays). The only BUs with a contract provision for hours worked on holidays are the sergeants and the police officers. Their CBAs specify nine premium holidays as qualifying for the pay rate of 2 1/2 times the officer's base rate. There is no meaningful basis for internal comparison on this issue, as it is peculiar to law enforcement.

The external comparison group has a variety of methods for computing premium pay on holidays:

- The number of premium holidays ranges from 6 to 12;
- 18 cities pay a premium for more than 9 days;
- 8 cities pay a premium rate of 2 1/2, one city pays a rate of 2, 16 cities pay at 1 1/2;
- 7 of the 8 cities paying a rate of 2 1/2 apply it to more than 9 holidays.

These differences complicate the comparison. However, the City's analysis provides some useful numbers: multiplying the number of premium holidays by the premium rate gives a total number of equivalent days that can be compared. This method produces a group average number of 19. Only 7 of the 25 cities exceed 22.5. This BU is at 22.5 (9 x 2.5) and would rise to 27.5 (11 x 2.5) pursuant to the Union's position.

Analysis and Discussion (continued)

Eighteen of the comparison cities have a total less than 22.5, showing that the Stillwater police officers have a relatively good situation regarding the value of premium holidays. The Union has not offered any justification for substantially improving its relative position for this benefit.

AWARD:

The language of Article XVIII - HOLIDAYS shall be retained.

ISSUES NO. 8, 9, 10 - INVESTIGATOR DIFFERENTIAL 2007, 2008, 2009

CURRENT CONTRACT: APPENDIX A - MONTHLY WAGE SCHEDULE

DIFFERENTIAL PAY

Juvenile Officer/Investigator/Narcotics Officer
\$175.00 per month over the Top Patrol (36 month) rate

UNION POSITION

Increase the differential to: \$200 in 2007; \$225 in 2008; and \$250 in 2009.

CITY POSITION

Retain the current \$175 differential.

UNION ARGUMENTS

- Specialty pay is unique to the police officer position, making internal comparators irrelevant.
- There has been no increase since 2003, causing the differential to be eroded by inflation.
- From 1996 to 2002, the differential increased 5 times, from \$128 to \$175. This is the longest stretch of time that the differential has not increased.
- External comparisons show that Stillwater pays a smaller differential than most other cities. Even with the Union's proposal for 2007, several of the 25 cities would pay an equal or higher differential.

CITY ARGUMENTS

- The differential has historically been in the \$155 to \$175 range and currently pays \$2,100/year.
- Previously negotiated increases were for \$5 or \$10 over the course of a CBA. The Union's proposed increase of \$75 from 2007-2009 is inconsistent with this history.

City Arguments (continued)

- The Union has not shown any substantial increase in the duties and responsibilities of the affected positions to warrant such a dramatic increase in the differential.
- It is highly unusual in these economic times to include increased economic items in CBAs.

ANALYSIS AND DISCUSSION

There is no dispute that this issue requires an external comparison, which is complicated by the wide variety of rates for specialty pay among the comparison cities and a lack of information regarding Stillwater's historical relative standing.

From 1996 to 2002, the differential increased by 36.72 %, with increases ranging from \$5 in 2001 and 2002, to \$10 in 1999, \$12 in 1996, and \$15 in 1998. It appears that the 2004-2006 CBA was the first in recent years not to include an increase in the differential. Data regarding this BU's relative standing in its comparison group prior to 2006 are not included in the record, so it cannot be determined how its relative standing was affected by the lack of an increase during those three years.

Despite some discrepancies in the parties' external comparison exhibits, they provide some guidance. The Union's exhibit shows: 19 cities paying a greater differential; 8 cities not providing any increase in the differential from 2006 to 2009 (all but one of these cities paying as much or more than Stillwater); averages of \$212.26 in 2006, \$217.74 in 2007, and \$232.12 in 2008. The City's exhibit shows: 6 cities not providing any increase from 2007-2009; 18 cities paying a greater differential; and averages of \$210.79 in 2007, and \$228.26 in 2008. Too few cities have settled for 2009 to provide a meaningful average. It is concluded that a substantial number of cities are increasing this economic item, which is appropriate for consideration in this case.

The City correctly points out that the Union's proposed amount for the three annual increases significantly exceeds previous ones. On the other hand, the City has not justified allowing its specialty pay to continue falling behind its comparable cities. Some increase is in order and the Union's proposal for 2007 is consistent with the specialty pay in the comparison cities. However, the Union's proposal for the following two years would unreasonably improve the relative position of the Stillwater police officers.

The differential has always been designated as a dollar amount rather than a percentage of the wage rate. As a practical matter, it is logical to value specialty pay in relation to the wage rate. In 2003 the differential represented 3.93% of the top patrol rate. Applying approximately 4% to the top patrol rate is a reasonable way of determining a suitable amount for specialty pay.

There are currently only two positions in the Stillwater Police Department that are subject to this specialty pay and the City has not claimed an inability to pay an increase.

AWARD

INVESTIGATOR DIFFERENTIAL

2007 - \$200 per month over the top patrol rate
2008 - \$205 per month over the top patrol rate
2009 - \$212 per month over the top patrol rate

SUMMARY OF ITEMS AWARDED

ISSUES NO. 1, 2 and 3 - GENERAL WAGE INCREASE

3.0% general wage increase effective January 1, 2007
3.0% general wage increase effective January 1, 2008
3.0% general wage increase effective January 1, 2009
0.25% general wage increase effective July 1, 2009

ISSUES NO. 4 & 5 - Withdrawn from arbitration

ISSUE NO. 6 - The language of ARTICLE XIII - COURT TIME shall be changed to:

An employee who is required to appear in court on their scheduled off-duty time shall receive a minimum of three (3) hours pay at one and one-half (1-1/2) times the employee's base pay rate. An extension or early report to a regular scheduled shift for court appearances does not qualify the employee for the three (3) hour minimum.

ISSUE NO. 7 - The language of Article XVIII - HOLIDAYS shall be retained.

ISSUE NO. 8, 9 and 10 - INVESTIGATOR DIFFERENTIAL

2007 - \$200 per month over the top patrol rate
2008 - \$205 per month over the top patrol rate
2009 - \$212 per month over the top patrol rate

This award is in full settlement of all issues submitted to this arbitration

October 31, 2008

Charlotte Neigh, Arbitrator