
In the Matter of Interest Arbitration Between
CITY OF BUFFALO

BMS Case No.
08-PN-0750

LAW ENFORCEMENT LABOR SERVICES, Inc.
LOCAL NO. 234 – POLICE DEPARTMENT

APPEARANCES:

Mr. Dean Mann, Business Agent, Law Enforcement Labor Services, Inc.,
appearing on behalf of the Union

Ms. Ann Antonsen, Consultant, Springsted Inc., appearing on behalf of the City

ARBITRATION AWARD

City of Buffalo, hereinafter City or Employer, and Law Enforcement Labor Services, Inc., Local 234, hereinafter the Union, reached impasse in their bargaining on a health insurance re-opener for 2008 regarding the level of the City's contribution toward premium. The Minnesota Bureau of Mediation Services, hereinafter Bureau, on March 11, 2008 certified this matter to conventional interest arbitration pursuant to the written request of the Union to do so. The parties submitted their final positions on the issues in dispute to the Bureau by March 26, 2008. The Bureau provided the parties with a panel of arbitrators from which the undersigned was selected to hear and resolve their bargaining impasse. A hearing in the captioned matter was held in Buffalo, Minnesota, on October 29, 2008, and the parties submitted their post-hearing briefs the last of which was received by the undersigned on November 17, 2008.

BACKGROUND:

This dispute is concerned with the amount the City will contribute toward the cost of an employee's family coverage health insurance in 2008, in the bargaining unit of

“All essential employees of the Buffalo Police Department, Buffalo, Minnesota who are public employees within the meaning of Minn. Stat. 179-A.03, Subd.14, excluding supervisory, confidential and non-licensed essential employees.”

Under the current collective bargaining agreement, January 1, 2007 – December 31, 2008, the City pays the entire premium cost for employees electing single coverage. In 2007 the City paid up to a maximum of \$688.43/month and \$31.96/month for dental insurance. They agreed to a “re-opener for health and dental insurance only for 2008”.

The Union’s final offer is:

“Article XVIII – Insurance

The Employer will contribute up to a maximum of \$780.00 per month for health insurance, including dependent coverage for 2008 and a maximum of \$31.96 towards dental insurance, including dependent coverage.”

The City’s final offer is:

INSURANCE – EMPLOYER CONTRIBUTION TO HEALTH INSURANCE
– ART. XVIII

The same amount as that contributed for the City’s other employees.

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|--------|---|
| Single | 100% contribution for full-time employees |
| Family | \$740.49 per month for full-time employees. |

Article XVIII, INSURANCE

18.1 The Employer will contribute up to a maximum of \$740.49 per month for health insurance, including dependent coverage for 2008 and a maximum of \$31.96 towards dental insurance, including dependent coverage. Insurance contributions for part-time employees shall be pro-rated.”

DISCUSSION:

The City has 87 employees. The Union represents 16 of those employees in two bargaining units. Fourteen are in the bargaining unit, which is the subject of this interest arbitration dispute, and it also represents two sergeants in a separate bargaining unit. The

Union negotiated its first collective bargaining agreement in the Sergeant's bargaining unit for 2008. The remaining 71 City employees are unrepresented. The City has established its premium contribution level for those employees at \$740.49/month, the same amount as its final offer for this bargaining unit. For 2008 the Sergeant's bargaining unit also agreed to the \$740.49 per month contribution level.¹

In 2007, in this bargaining unit, the parties agreed that the City would contribute \$688.43/month toward the health insurance premium. In 2007 the total premium for the Medica Open Access family coverage was \$1082.69/month. Thus, the City's contribution covered 63.5% of the total premium cost. The employee's share of the premium cost was \$394.26/month or 26.5%. In 2008 the Medica Open Access total family coverage premium increased to \$1220.19/month or \$137.50/month, which was a 12.7% increase. If the City's final offer were to be adopted (\$740.49/month) the percentage of the total premium cost it would be absorbing would be 60.69%, a decrease from the 63.5% it contributed in 2007. And, under the City's 2008 final offer the employees would incur a cost increase of \$85.44/month, a 21.7% increase over 2007 from \$394.26/month to \$479.70/month. If the Union's final offer were adopted, which calls for the City to contribute \$780.00/month or 63.92% of the total family premium for the Medica Open Access plan it would also result in an increase of \$49.93/month or a 12.7% increase in the employee's contribution level for 2008.

The City argues that arbitrators in Minnesota have established that the comparables for fringe benefit levels are other employees of the political subdivision. It claims that virtually without exception since 1991 arbitrators have been unwilling to provide any one employee group of a public employer a higher level of fringe benefits than the benefits of the other employees of the same public employer, especially where there is a long established practice of providing the same level of benefits to all employees. It asserts that this results in a uniformity of fringe benefit levels within the political jurisdiction. And, it argues that the City has historically offered the same benefit levels to all of its employees. The Union counters that in attempting to negotiate with the City pursuant to the 2008 re-opener it was presented with a take it or leave it

¹ The evidence established that one sergeant selected single coverage and the other selected family coverage for 2008 (Employer Exhibit IX)

situation and had no choice but to arbitrate. It argues that in this case there is only one other represented bargaining unit in the City, the police sergeants that organized in 2007 and bargained a one-year contract for 2008. It contends that because all other City employees are unrepresented they must accept what the City chooses to give them and that cannot be used to claim that there is an internal settlement pattern.

Clearly, it is a given that in interest arbitration internal comparability will be examined in assessing the parties' final offers, and it can be a significant factor in the outcome of the dispute. The undersigned has stated several times in other interest cases, when discussing internal comparability, that an employer's ability to negotiate voluntary agreements with a majority of its represented employees the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes its persuasive value. The argument advanced by the City in this case is that its offer should be selected because it has established the same health insurance premium contribution level for all other City employees as it has offered to these employees, and arbitrators prefer uniformity of fringe benefits among employees of the same political subdivision. I do not disagree that uniformity in the area of health insurance is the preferred option, but not always achievable. It is the case that many times with an employer who has multiple bargaining units with multiple unions that, for example, employees represented by the Teamsters union will be covered by that union's health and welfare plan, whereas the rest of the employer's represented employees are covered under a different plan. The desire for a single health insurance program for all employees explains why employers have created committees of employees from different groups and unions to explore changes in the existing program in an effort to hold down or reduce costs. That is also why in some situations an employer and a union have agreed to jointly proceed to arbitrate final offers dealing with health insurance involving multiple bargaining units before the same single arbitrator. But, all of the foregoing examples deal with represented employees. There is a difference in the significance of uniformity of carrier, plans and benefit levels versus how much each employee group will be required to contribute toward the premium. Regarding premium contribution, it is one thing for an employee earning \$50,000/year and receiving a 3% wage increase to be required to pay \$100/month more for health

insurance and quite another for the an employee making \$30,000/year and receiving a 3% wage increase to pay an additional \$100/month more for health insurance. In the former case the employee's wage increase will be \$1500/year whereas in the latter case the employee's wage increase will be \$900/year and all of it will be taken up by the increased cost of insurance. And, lack of uniformity of premium contribution levels among employee groups does create the same difficulties and cost implications that different carriers, plans and benefit levels among employee groups present.

In this case, the City argues that its unilaterally imposed health insurance premium contribution levels should be accorded the same weight as bargained conditions of employment when considering internal comparability in an interest arbitration setting. In the undersigned's opinion, unilaterally establishing a wage rate or health insurance premium contribution level for a majority of employees and then claiming there is an established internal pattern that is binding upon represented employees in interest arbitration is something quite different from bargaining such a pattern with other employees having the same or similar collective bargaining rights. Here, the only other employees with the ability to bargain and arbitrate with the City are the two police sergeants, and for 2008 they were negotiating their first collective bargaining agreement with the City. Thus, I believe that in this case to accept the City's argument that there is an established and binding internal pattern that should control the outcome, where 82% of employees in the political subdivision comprising the pattern are unrepresented without collective bargaining rights, would elevate the significance of that internal pattern to a level that would effectively emasculate the collective bargaining rights of this bargaining unit, at least with respect to employer/employee health insurance premium contribution levels. As the Union argued, it was presented in bargaining with what it characterized as a "take it or leave it" City proposal and the City's position has not changed and is reflected in its final offer. In essence the City, and no evidence to the contrary was provided, established what it was going to contribute toward health insurance for its unrepresented employees and then argued to the Union that there was a binding internal pattern and was thereafter intransigent. Thus, because the asserted internal pattern is comprised of 82% unrepresented employees and two represented sergeants I am

persuaded that a controlling internal settlement pattern does not exist which supports selection of either party's final offer.

Another criteria commonly used by interest arbitrators in the public sector in evaluating parties' final offers is to compare the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services in comparable units of government. In other words, examine what support does a party's offer enjoy among the established group of external comparable bargaining units – in this case other police department bargaining units. But, because of the myriad of different insurance providers, plans and benefit levels no comparative data was provided. The only evidence regarding the external comparables was a chart depicting employer contribution levels in terms of the percentage of the total premium being paid by the employer, for example 70% of the total premium paid by the employer. And, because of the variations in the plans and coverages a meaningful comparison in terms of dollars contributed by the employer is not meaningful. However, a comparison of percentage contribution levels is possible and is meaningful.

The evidence adduced shows that in 2006 the average among the comparables was 76% of the total family coverage premium paid by the employer, in 2007 the average was again 76%, and in 2008 the average was 73%. That compares with the City's contribution level in 2006 of 67%, and in 2007 it was 64%. In 2008 under the City's final offer it would be contributing 61% of the total family coverage premium and under the Union's final offer the City would be required to contribute 64% of the total family coverage premium. This evidence regarding external comparability supports selection of the Union's final offer.

Neither pay equity nor the City's ability to pay are factors in this case. The additional cost to the City if the Union's final offer were selected is \$4741.20 for 2008. It is true that in this economic climate the City will be facing more financial stress than it has encountered in recent years, but the cost implications of selection of the Union's final offer on the City's financial situation will be minimal. Thus, in the undersigned's opinion, there are no other economic factors that support adoption of either party's final offer.

A final factor to be examined is what has occurred in the past regarding the City's contributions to an employee's family coverage premium costs. In 1999, the total premium cost was \$445.45/mo and the City contributed 79.2% or \$352.63/mo and the employee paid \$92.83/mo. In 2000 the total premium increased to \$634.34/mo or \$191/mo over the 1999 premium and in 2000 the City contributed \$450.00/mo or 70.9% of the premium and the employees paid \$184.34/mo. The employee's cost increased by approximately 100% in 2000. Then in 2001 the total premium increased \$158/mo to \$792.93/mo and the City's contribution increased to \$505.08/mo or 64.3% of the total family coverage premium cost. In 2001 the employees' contribution level increased 53% to \$282.85/mo. In 2002 the total premium increased \$84/mo to \$876.98/mo and the Employer contributed \$552.11/mo or 63% of the total family coverage premium, while the employees' contribution increased by 15% to \$324.87/mo. Then in 2003 the total premium increased \$63/mo to \$940.38/mo and the City contributed \$597.11/mo or 63.5% and the employee paid an additional 5.5% or \$55/mo for a monthly contribution of \$343.28/mo. In 2004 the total premium increased by \$228/mo to \$1168.50/mo and the City increased its contribution to \$795.11/mo or 68% and the employee contribution level rose 11.6% to 373.39/mo. Then in 2005 the total premium increased \$105/mo to 1273.50/mo and the City's contribution level increased to \$866.51/mo or 68% while the Employees contribution increased by 9% or \$33/mo to \$406.99. In 2006 the total premium increased by \$26/mo to 1299/mo and the City's contribution increased by \$26/mo to \$892.01/mo or 68.7%. In 2006 the employees' contribution level was not increased and the contribution level stayed at \$406.99/mo. In 2007 the total premium decreased by \$216/mo because of a change in plans to \$1082.69/mo and the City's contribution level decreased by \$205/mo to \$688.43/mo or 63.6% of the total premium cost and the employees cost decreased to \$12/mo to \$394.26/mo.

The foregoing statistics show that year over year from 1999 to 2000 and from 2000 to 2001 the City incurred large premium increases for family coverage and the employees contribution levels doubled between 1999 and 2000 and increased by 53% from 2000 to 2001. Then from 2001 through 2006 the average increase in the employees' contribution level year over year averaged 8.22% with it not going up at all in 2006. In 2007 the parties agreed to a change in plans that resulted in significant cost

savings and the employee's contribution level was only increased by \$10/mo. And, from 2001 through 2007 the City's contribution level averaged 65.6% of the total family coverage premium. The City's final offer would increase the employee contribution level over what it was in 2007 by \$86/mo or 21.8% to \$479.70/mo. On the other hand, the Union's final offer would increase the employees' contribution level by \$46/mo or 11.6% to \$440.19/mo. When comparing the percentage increase in the employee contribution level to the average percentage increase over the previous five years of premium increases (2002 – 2006) of 8.22% the Union's proposal is the more reasonable. The City's proposal would increase the employee contribution level by 21.8% whereas the Union's final offer increases the employee contribution level by 11.6% and more inline with the recent historical average. Also, the average of the City's contribution to total premium over the period 2001 through 2007 was 65.6% and under its final offer its contribution as a percentage of total premium would be 60.7% whereas under the Union's final offer the City's percentage contribution to premium would be 63.9%, which again is closer to the historical average.

Thus, the undersigned is persuaded that prior bargaining history regarding the City's contribution level to the health insurance premium favors adoption of the Union's final offer. It is much closer to the historical average percentage increase in the employee contribution level than the City's final offer. And, the Union's final offer increase of 11.6% in the employee contribution level exceeds the historical average increase by more than 3%.

AWARD

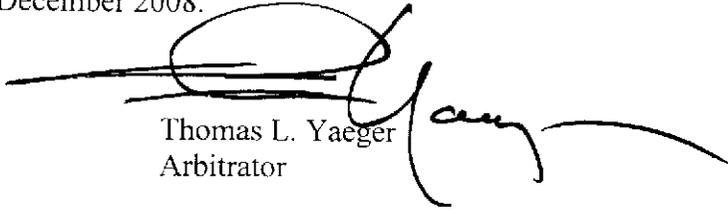
The Union's final offer

“Article XVIII – Insurance

The Employer will contribute up to a maximum of \$780.00 per month for health insurance, including dependent coverage for 2008 and a maximum of \$31.96 towards dental insurance, including dependent coverage.”

is selected and shall be incorporated into the parties' 2007-2008 collective bargaining agreement.

Entered this 15th day of December 2008.



Thomas L. Yaeger
Arbitrator