

**IN THE MATTER OF ARBITRATION
BETWEEN**

**Minnesota Teamsters Public &
Law Enforcement Employees
Union, Local No. 320**

and

BMS Case No. 08 PN 0453

**City of Owatonna, Minnesota
Sergeants and Corporals Unit**

NAME OF ARBITRATOR: ARBITRATION ASSISTANT	Bernardine Bryant Faith Latimer
DATE AND PLACE OF HEARING:	October 31, 2008 Owatonna, Minnesota
BRIEFS RECEIVED:	November 18, 2008
DATE OF AWARD:	December 14, 2008

APPEARANCES

FOR THE UNION:	Paula Johnston, General Counsel Timothy Hassing, Sergeant Thomas Murphy, Sergeant
FOR THE EMPLOYER:	Brandon Fitzsimmons, Attorney Shaun LaDue, Police Chief Brad Svenby, Finance Director

INTRODUCTION

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. 179A.01-3. Teamsters Local 320 (Union) is the exclusive representative for the Police Sergeants and Corporals employed by the City of Owatonna (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 parties are signators to a collective bargaining agreement effective January 1, 2006 through December 31, 2008. This agreement contains a re-opener on wage rates for 2008. On April 24, 2008 the Bureau of Mediation Services certified the following issue for conventional interest arbitration: Wages for 2008-Wage Increase, If Any-Article 14.

Hearing was held October 31, 2008. Both parties had full opportunity to submit documents and examine witnesses. Written closing briefs were received by the Arbitrator on November 18, 2008, and the record was closed.

UNION FINAL POSITION

Article 14

14.1 Employees shall be paid in accordance with Schedule "A" attached hereto and made a part of this AGREEMENT. The salary schedule shall be increase by 2.95% for 2006, 2.75% for 2007 and ~~a re-opener on wages for 2008~~ wages for 2008 shall be increased to the following effective 1/1/08:

Police Corporals

92.5%	95%	97.5%	100%
<u>0-12 Mos.</u>	<u>13-24 Mos.</u>	<u>25-36 Mos.</u>	<u>After 37 Mos.</u>
\$6,025.07	\$6,146.40	\$6,278.13	\$6,392.53

Police Sergeants

<u>0-12 Mos.</u>	<u>12-24 Mos.</u>	<u>After 25 Mos.</u>
\$6,548.80	\$6,675.07	\$6,806.80

EMPLOYER FINAL POSITION

Article 14. Wages

14.1 Employees shall be paid in accordance with Schedule “A” attached hereto and made a part of this AGREEMENT. The salary schedule shall be increased by 2.95% for 2006, 2.75% for 2007 and 2.75% ~~a re-opener on wages~~ for 2008.

ii. Schedule “A”

POLICE CORPORALS

0-12 Mo	13-24 Mo	25-36 Mo	37 Mo
<u>\$4,656.52</u>	<u>\$4,782.37</u>	<u>\$4,908.21</u>	<u>\$5,034.07</u>

POLICE SERGEANTS

	0-12 Mo	12-24 Mo	25 Mo
2008	\$5130.61	\$5262.17	\$5,397.09

UNION ARGUMENTS

The Union argues that both the nature of the work performed by this bargaining unit, and the Police Department’s organization have changed significantly in recent years. It argues Owatonna is becoming comparable to metro area cities, and competes with those communities to attract employees. Therefore, the Union asserts its proposal for a large wage increase is appropriate and justified.

Sergeants Tim Hassing and Thomas Murphy both testified that their duties have increased in recent years. When the current Police Chief, Shaun LaDue, was hired by the City of Owatonna in 2004 he instituted a number of new procedures and assigned additional duties to the sergeants. They stated that some of those additional duties included producing daily activity logs, participating in daily roll calls to share and compare information between officers’ shifts, performing trimester reviews on subordinate officers, performing follow up work on criminal background checks, reviewing and providing court notices for officers, reviewing and updating officer schedules, authorizing officer requests for time off, and being trained on new higher tech equipment.

Further, they stated that the bargaining unit has had a large increase in work volume in recent years. The number of calls responded to by the police department has increased from about 9,800 calls in 2003, to approximately 13,000 calls this year. The Union submitted data showing large department increases in the number of citations and arrests from years 2007 to 2008. It also submitted information about the recent increase in the size of the Owatonna police force which is now larger than the nearby cities of Faribault and Albert Lea. (Union brief and Exhibits 3, 4, & 5)

The Union argues that the appropriate market comparison group for the Arbitrator to consider is metro area police departments. In support of this argument, the Union points out that city administrators have publicly compared Owatonna with surrounding metro cities. In recent news articles the City Administrator was quoted as saying ‘we are also attracting candidates from metro areas’ for administrator level jobs. (Union Ex 10, 12) The Union puts forward a list of nineteen jurisdictions, all within the metro area and all with populations between 15,000 and 35,000 in size. Owatonna has a population of approximately 25,000 residents. Based on this metro comparison group, the average maximum wage for sergeants in 2008 is \$6,210 per month. (Union Ex 14) Owatonna's bargaining unit maximum wage in 2007 is \$5,253 per month. The Union’ proposal would raise the maximum wage rate to \$6,807 per month in 2008. This monthly rate is only slightly above the average of another comparison group of nine metro jurisdictions. (Union Ex 13) The Union also argues that the total tax capacity for Owatonna is higher than the other cities in its chosen comparison group. (Union brief, Emp 24)

The Union points out that in 2007, the City granted wage increases of at least 7 % to a number of its management level employees. The Police Chief received a 7.9% salary increase and the Police Captain received a 13% increase in pay. (Union Ex 11) In addition, the Union argues the City’s financial condition is healthy citing audit data discussed at the August 2008 City Council meeting. The Union points out the City’s net assets far exceeded liabilities in 2007. (Union brief and Ex 15)

EMPLOYER ARGUMENTS

The City argues that its final wage proposal keeps this bargaining unit in about the same position relative to surrounding jurisdictions, and relative to other city employees.

It argues the Arbitrator should grant an award reflecting what the parties would likely have negotiated. The City proposal of 2.75% is the same as the wage increase granted to unrepresented employees Grade 7 and below, and close to the 3% that was recently negotiated with the Operating Engineers Union, Local #70. Therefore, its proposal reflects more closely what the parties would have agreed to through the normal bargaining process. The City argues that the Union position would place this bargaining unit far outside the salary range of surrounding police departments and significantly alter its internal comparison.

The City argues that all the duties performed by members of this bargaining unit are included in their position descriptions and to the extent that the Union has objections or concerns about duties, an interest arbitration is not the appropriate forum for resolving this issue.

With respect to the question of market comparisons, the City argues Owatonna is not 'metro' by any valid definition of the term. It is not defined as metro by the Metropolitan Council, by the U.S. Census, or any other state or federal agency. Owatonna is located in Steele County. Even under broad definitions of the metro area, which include 'collar' or outer ring counties, Steele County is not included in the definition of what constitutes a metro region. Further, the City argues that its per capita tax base is much lower than the average suburban city. Thus, Owatonna is more reliant on local government aid than are most suburban cities. The City also points out that the first set of metro cities used by the Union for comparison purposes has an average population that exceeds Owatonna's population by more than 20,000 residents. (Employer 6, 7, 23 & 24)) For all these reasons, the City argues that metro cities are not an appropriate comparison group to the Owatonna law enforcement unit.

In response to the Union's claim that the City has made the metro comparison itself, the City points out in the Employer brief that the City has only mentioned wage data of metro cities for comparison purposes for city positions that are primarily Grade 8 and above, nonunion, Fair Labor Standards Act exempt, salaried, and in which there was an identifiable recruitment problem. None of these variables apply to this bargaining unit.

The City of Owatonna is within Minnesota's Southeast Economic Development Region (Region 10). (Employer 3, 5, 6 & 7) The Employer argues that a comparison group which includes cities within Region 10, with populations ranging within 10,000 of each other and a per capita tax base within \$500 of Owatonna's is the most appropriate comparison group. The City argues the best comparison group includes the cities of Albert Lea, Austin, Faribault, Northfield, and Winona. These cities all have unionized police forces. Using this comparison group, the City asserts that Owatonna ranks second of these five cities in top wages. The City stated its final proposal will maintain this bargaining unit's ranking for 2008. In addition, Owatonna contributes more toward the cost of employee health insurance than other cities in this group and ranks even more above the average if health insurance cost is figured into the total wage package. (Employer 23, 25) The City pointed out that its total compensation costs include health benefits, PERA contributions, uniform allowance and other items. When total compensation is calculated, the City's proposal represents a 5.29% overall increase while the Union's proposal represents a 28% to 29% salary increase. The City's total non-variable cost would increase approximately \$44,000 under its proposal as compared to an increase of \$229,000 using the Union's proposal (Employer 38 and brief)

Further, the City argues the Union's proposed increase would be so large that it would jeopardize compliance with the Pay Equity Act. The Union's proposal would put these two male dominated classes, Sergeants and Corporals, at over \$8,000 and \$13,000 above predicted pay rates. (Employer 50)

The City also points out that this unit's 2007 wage increase was well above that of other local government employees in Steele County. Therefore, the Union's proposed increase would be widely disproportionate when compared to that of other local public sector employees in Steele County and the City. (Employer 26 at 21)

The City makes several arguments regarding its financial situation. Because of the way property tax and local government aid revenues fund municipalities, the unreserved fund balance for one year is needed to pay operating expenses for the first half of the following year. The State Auditor recommends that municipalities maintain a 35% to 50% fund balance. Owatonna's unreserved fund balance dropped significantly between years 2002 - 2006. In year 2006 the city maintained a 33.5% fund balance. To

help re-build the fund balance, the City is dedicating two percent of its 2008 revenues to build up this reserve. (Employer 32 and testimony of Finance Director, Brad Svenby) The changes made by the State of Minnesota in the local government aid formula have had a large impact on Owatonna. It has experienced an 18% decline in local government aid as a revenue source since 2003. (Employer brief) Further, the City stated that the police department has increased its staffing from 28 full time equivalent (FTE) licensed employees to 35 FTE over a three year period. Therefore, the department is an increasing portion of the city's total budget.

Given the general downturn in the economy, including an increasing local unemployment rate, (Employer 29) the City argues its final proposal is very reasonable and fiscally responsible.

ARBITRATOR ANALYSIS

Market comparison

A major issue in this dispute is what constitutes an appropriate market comparison group for sergeants and police corporals. The Union's fundamental argument is that the 'metropolitization' of Owatonna has significantly changed the environment in which these contract negotiations take place. They believe this change is enough to justify an unusually high wage award. The Employer believes the appropriate context for market comparison to the City of Owatonna is the Southeast economic region of Minnesota.

The Arbitrator accepts the general proposition that the metropolitan area is expanding and the distance between the core metro area and surrounding communities is shrinking both geographically and in other ways. Commuters are more willing to travel further distances each day to arrive at their work place. Some suburbs which were considered rural only 30 years ago are now considered part of the metropolitan area. However, the City's evidence presented at the hearing is convincing that Owatonna is not considered a metro community. The arguments they presented are more compelling even though the arbitrator is aware no two cities are identical for wage comparison purposes.

Using state or federal agency definitions, it is clear that Steele County and the City of Owatonna are not included in either the seven or ten county metro region. The City of Owatonna is located in Steele County approximately sixty miles southeast of

Minneapolis. In addition, U.S. Census Bureau data does not include Steele County and the City of Owatonna in the new *Micropolitan* areas which were identified to give more Cities and Counties a Metropolitan status. Despite the fact that the Employer may have competed with metro cities for a small number of management level employees, the City of Owatonna is not presently included as part of the metropolitan region.

The City, in its testimony, used for comparison purposes the Southeast Minnesota Economic Development Region as defined by the Minnesota Department of Employment and Economic Development (DEED) and within that region they included the cities of Albert Lea, Austin, Faribault, Northfield and Austin for comparability to the law enforcement bargaining unit. The group used by the City for comparison is more appropriate when all things are considered. For example, the cities used by the employer for comparison are all located in economic region 10; they are close in population size to Owatonna; all have unionized police forces; and they have a somewhat similar tax base per capita. While not exactly similar to the City of Owatonna, these cities are more similar as a comparison group than the metro cities the Union offered for comparison.

The Union's two selected comparison groups are considered part of the greater metropolitan area. The Union specifically identified with the cities of Lakeville, Burnsville and Bloomington. (Union brief) These three cities are considered part of the seven county metro region. They have populations ranging from 52,000 to over 85,000 residents while Owatonna has a population of approximately 25,000 residents and they have a very different tax base than the City of Owatonna. Even if the Union's other comparison group which included Metro cities all with populations ranging from 15,000 - 35,000 residents was used, they have an average wage \$597 lower for year 2008 than the Union's 2008 wage proposal. At the hearing, the City of Bloomington was used specifically as the best comparison city even though Bloomington's police force has 148 employees and an \$18 M budget and a population which exceeds 85,000 residents. (City of Bloomington briefing, December, 2008) The mere fact that Chief La Due is implementing what might be construed by the Sergeants as similar processes and procedures in the City of Owatonna police department that he found effective when he was an employee in the Bloomington police department, does not justify a wage comparison to the city of Bloomington. Typically, supervisors are hired based on their

experience, knowledge and training and what they can bring to the position for which they are hired.

Internal equity

In this case, the Arbitrator views arguments concerning internal equity to have much less weight than market comparisons and rejects the City's argument that this award should be influenced by any representations made by the City to its non-union employees concerning their wages. The Union argues correctly that the Employer's "promises to employees outside of this bargaining unit are irrelevant". In addition there has been no compelling pattern of settlements set in this case, since to date only one other bargaining unit has a wage settlement agreement for 2008. Further, recruitment and retention are stable for this unit and pay equity is not an issue.

Ability to Pay

With respect to ability to pay arguments, the evidence indicates the City is relatively stable financially in year 2008. While not controlling, the arbitrator gave note to the evidence presented that an award greater than the City proposal might place future financial constraints on the City. However, the Employer's arguments concerning its financial condition are legitimate considerations for this award given the recent state revenue forecast. An award even close to the Union's proposal would fall far outside reasonable bounds relative to market comparisons, internal balance, and sound fiscal judgment.

AWARD

The Arbitrator gave thorough consideration to all the evidence, testimony and arguments presented by the parties. In doing so, the Arbitrator finds an award of a general wage increase of 3.25% over 2007 rates.

Schedule A --Police Sergeants/Corporals Wages

Effective January 1, 2008 **3.25%**

Bernardine Bryant, Arbitrator
December 14, 2008