

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION
)
 between)
)
 City of Fridley, Minnesota)
) BMS Case No. 08-PN-828
 -and-)
)
 Law Enforcement Labor Services,)
 Inc., Local No. 310 (Police)
 Sergeant Unit) January 3, 2009
))

APPEARANCES

For City of Fridley, Minnesota

Frank J. Madden, Attorney, Frank Madden & Associates, Plymouth,
 Minnesota
 Deborah Dahl, Human Resources Director
 Rick Pribyl, Finance Director
 Don Abbott, Public Safety Director

For Law Enforcement Labor Services, Inc., Local No. 310

Brooke Bass, Business Agent
 Jeffrey A. Guest, Police Sergeant
 Steve Monsrud, Police Sergeant
 Rick Crestik, Police Sergeant
 Mike Morrissey, Police Sergeant

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 310
 (hereinafter referred to as the "Union") is the certified
 bargaining representative for six essential licensed Police
 Sergeants employed by the City of Fridley, Minnesota (hereinafter
 referred to as the "City" or "Employer"), who are supervisory
 employees as defined in M.S. 179A.03, subd. 14.

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

The Parties entered into negotiations for a successor 2008 and 2009 collective bargaining agreement. The Parties negotiated and mediated, but were unable to resolve numerous issues. As a result, on April 25, 2008, the Bureau of Mediation Services (BMS) received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On May 5, 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. Court Time - Minimum Hours for Standby - Article 14, Section 1
2. Court Time - Cancellation Minimum Pay - Article 14, Section 2
3. Insurance - Employer Contribution 2008 - Article 16
4. Insurance - Employer Contribution 2009 - Article 16
5. Wages - Wage Rate 2008 - Article 21, Section 1
6. Wages - Wage Rate 2009 - Article 21, Section 1
7. Wages - Specialty Pay 2008 - Article 21, Section 2
8. Wages - Specialty Pay 2009 - Article 21, Section 2

9. Separation - Separation Benefit Plan - Article 22, Section 1
10. Holidays - Add Floating Holiday - Article 26, NEW SECTION
11. Grievance Procedure - Choice of Remedy - Article 7, NEW SECTION

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 November 18, 2008, at 9:00 a.m. at the Fridley City Hall, 6431 University Avenue Northeast, Fridley, Minnesota. The Parties were afforded full and complete opportunity to present evidence and arguments in support of their respective positions.

The Parties agreed to keep the record open until November 24, 2008, in order to resolve any disputes over data presented by the Parties during the arbitration hearing. Pursuant to the statute and the agreement of the Parties, post hearing briefs were timely submitted by the Parties by e-mail attachment on December 8, 2008. The Parties' post hearing briefs were then exchanged electronically by the Arbitrator on December 9, 2008, after which the record was considered closed.

Issue Number 3, Insurance Contribution for 2008 was settled by the Parties prior to the arbitration hearing and therefore will not be discussed by the Arbitrator.

**ISSUE ONE: COURT TIME - MINIMUM HOURS FOR STANDBY - ARTICLE
14, SECTION 1**

**ISSUE TWO: COURT TIME - CANCELLATION MINIMUM PAY - ARTICLE
14, SECTION 2**

POSITION OF THE PARTIES

The Union is proposing to increase all court time standby minimums from two hours to three hours. The Employer seeks to retain the current two hours of court time standby pay.

AWARD

The Union's position is sustained.

RATIONALE

In 2003, the City implemented a court time standby program whereby Sergeants are placed on standby pending notification of their appearance in court for a period of two hours prior to the time they are scheduled in court.

Employees who work nights and sleep during the day reported that their sleep was being disrupted by phone calls at 12:00 p.m. noon informing them that court was canceled. In order to avoid disrupting Sergeants who work nights and sleep during the day, employees are only called if they are needed in court. This call is generally made at approximately 12:00 p.m. noon, and employees are not called if court is canceled. Sergeants receive the two hours of court standby automatically regardless of whether or not court is canceled.

Internal comparisons are an important factor to the morale of this bargaining unit, other City unions and the Employer. Moreover, consistency in economic and non-economic items is of great importance in maintaining labor relations stability.

The Union's goal is to reach parity with the Patrol Officers (represented by LELS in a separate bargaining unit), who they supervise. The Patrol Unit currently receives three hours of standby time for court appearances and three hours of standby pay for court cancellation. In order to maintain morale, and at the same time maintain consistency among law enforcement employees in the City, justifies awarding the Union's position.

The costs of expanding Sergeants' court time standby to three hours is the equivalent of a 0.25% wage increase. This is affordable to the City, while allowing the City's law enforcement employees to be treated equally with respect to standby and cancellation court pay.

ISSUE FOUR: INSURANCE - EMPLOYER CONTRIBUTION 2009 - ARTICLE 16
POSITION OF THE PARTIES

The City has proposed that for 2009, Sergeants will receive health insurance benefits and contributions equal to that provided to non-union employees. The Union's final position is a contract re-opener solely for the issue of health insurance in 2009.

AWARD

The Employer's position is sustained.

RATIONALE

It is a well-established principle in interest arbitration that when deciding fringe benefit issues, such as health insurance, arbitrators rely, in great part, on internal consistency with settlements negotiated with other bargaining units in the same jurisdiction and the benefits established for non-union employees. The rationale for this principle is that it maintains internal consistency among all employees, both union and non-union, that are equally impacted and benefited in the same manner.

The City has historically maintained consistency among all employees, both union and non-union, with regard to health insurance. Specifically, all other employee groups, union and non-union, have uniform health insurance benefits and contribution amounts for 2009 (non-union plan), and the City's 2009 collective bargaining agreements with LELS Police Officers and IAFF Firefighters include "me too" language similar to that proposed by the City in this case.

The Sergeants' bargaining unit was certified with LELS in 2003. From 2003 to 2006 the Union negotiated their insurance benefits, albeit all union and non-union employees received the

same benefits and contributions. The record indicates in 2007 the LELS Police Officers had a re-opener for insurance, while the Sergeants agreed to the non-union health insurance plan. Once again, the negotiations between the City and the LELS Police Officers resulted in all union and non-union employees receiving the same benefits and contributions.

The Union is seeking to negotiate health insurance in 2009 because of the radical changes to plan design. For 2009, in light of Health Partners proposal for a 15% rate insurance, the City switched carriers to Medica, eliminated the High Plan and added an HSA. The City no longer offers the High Plan and when members of the Sergeants unit participated in open enrollment in 2008, they had the option of enrolling in the base plan, the HRA VEBA plan or the new HSA plan. The City's insurance premiums decreased by 6.2% as a result, and this entire savings is being passed on to all City employees.

The City has not changed its contribution levels for 2009 and it will contribute the same amount in 2009 as contributed in 2008. This was agreed to by all City employees, with the exception of the Sergeants. To now allow the Sergeants to attempt to negotiate something other than what was agreed to by other City employees for 2009 would be unfair and unreasonable to those employees.

Moreover, the Union's proposal for a contract re-opener is not practical or efficient. The Arbitrator's award is being issued on January 3, 2009, which leaves little time for the Parties to negotiate insurance benefits and contributions for 2009. If insurance benefits and contributions are to be changed, there would be more time to do so in successor negotiations rather than in 2009.

ISSUE FOUR: WAGES - WAGE RATES 2008 - ARTICLE 21, SECTION 1
ISSUE FIVE: WAGES - WAGE RATES 2009 - ARTICLE 21, SECTION 1

POSITION OF THE PARTIES

The City's position is a 2% general wage increase for 2008 and a 2% general wage increase for 2009. The Union's position is a 4% general wage increase for 2008 and a 4% general wage increase for 2009.

AWARD

A 3% general wage increase for 2008 and a 3% general wage increase for 2009.

RATIONALE

It is generally recognized by arbitrators that there are four considerations in interest arbitration to determine appropriate wage increases (ability to pay, internal and external comparisons and cost-of-living and other economic factors). The awarded general wage increases of 3% for both 2008 and 2009 are

justified on the basis of those factors generally used to determine wage rates.

The first consideration is the Employer's ability to pay for the awarded salary increases. Obviously, if the Employer cannot afford wage increases above their proposal (2% each year) the other three considerations are moot. Such, however, is not the case here. While it is true that our national, state and local economies are struggling and undergoing rapid transition from years past, there is no evidence that the City cannot afford the awarded salary increases and could even afford the Union's wage proposals had they been awarded by the Arbitrator. In fact, the City conceded an ability to pay the wage increases proposed by the Union.

The Arbitrator cannot ignore the fact that our nation, including Minnesota, is currently in a recession which is exemplified by high unemployment rates, declining property values and recent municipal layoffs. Further, the Arbitrator cannot ignore the City's concerns that their revenues are declining due to levy limit caps, declining building permit activity and loss of Local Government Aid. How these factors impact the financial health and stability of the City in the future are important, but have little relevance for 2008 and 2009, since the budgets have already been adopted for those years and there is adequate

revenues to fund the awarded salary increases for the six members in this bargaining unit.

As noted previously, the goal of the Sergeants was to reach parity with the LELS Police Officers, who they supervise. This parity argument is also valid as to wage increases. The City has historically maintained a consistent pattern of general wage increases between all employee groups - IAFF representing 5 firefighters, LELS representing 29 Police Officers and 162 non-union employees. For 2008 and 2009, the wage pattern is absolutely uniform with 3% wage settlements for each year. Thus, parity has been achieved between the LELS Police Officers and LELS Sergeants for 2008 and 2009, as well as all of the other City employees, both union and non-union. Consistency in wage increases among all employee groups (union and non-union) is of great importance and priority in maintaining labor relations stability.

The Union presented evidence that its wage proposal (4% each year) maintains internal equity by sustaining City compliance with the Pay Equity Act as mandated by the Minnesota Legislature. Obviously, if the Union's wage proposal satisfies the compliance test (underpayment ratio) then the awarded salary increases (3% each year) that are less than the Union's proposal would also be in compliance with the Pay Equity Act.

An award of the Union's wage position would lead to wage compression between the Sergeant and Lieutenant classifications at the City. The Union's final position for 4% wage increases in 2008 and 2009 would have decreased the historical 8% wage differential between the Sergeant and Lieutenant classifications to 5.9% in 2009. The awarded salary increases of 3% in 2008 and 3% in 2009 will not create any salary compression problems between the Sergeant and Lieutenant classifications because those classifications receive the same salary increase. This would not have been the case under the Parties' wage proposals.

It would be unfair and improper for an interest arbitrator to award wage increases solely upon internal settlement patterns without the application of the other considerations generally used in interest arbitration. PELRA implies that all appropriate and reasonable wage standards should be considered, including external comparables. (M.S. 471.993). Arbitrators also strive toward maintaining historical differentials within the external marketplace.

The appropriate external comparison group for Fridley Sergeants includes all of the DCA Stanton Group 5 cities with populations over 25,000. This has been the primary comparison group agreed to by the Parties during bargaining of prior contracts.

The City argues that Eden Prairie, a city within Stanton Group 5, should be eliminated because their police department members are non-union employees and their wages are some of the highest in the State of Minnesota. The City's arguments are without merit. The City should not be allowed to carve out an exception based on those arguments. This same logic would also apply to the Union if they found a city in Stanton Group 5 to be not within their liking. Both Parties must abide by the cities contained within Stanton Group 5 unless they can mutually agree upon a different comparability group.

The Union presented substantial evidence of historical wage trends in Stanton Group 5. The average wage increase in 2008 is 3.77% and in 2009 is 3.86%. It should be noted, however, that only 9 of the 25 cities have settled for 2009. Thus, this small sampling has limited application for 2009. In any event, the awarded wage increases of 3% for 2008 and 3% for 2009 will leave the Fridley Sergeants about \$206 per month behind the average of the comparable sergeants in Stanton Group 5 for 2008 and \$339 per month behind the average for 2009.

While this differential between Fridley Sergeants and the other Stanton Group 5 cities is increasing in 2008 and 2009, it is important to note that the standby pay award adds a 0.25% wage increase which offsets some of this disparity. Accordingly,

there is no justification for a market adjustment wage increase from 3% to 4%.

The Consumer Price Index (CPI) for the Urban Wage Earners and Clerical Workers is 5.4% as of September 2008. While CPI is a valid consideration in interest arbitration, it is not the most important one. In the City, the CPI affects all employees equally. Specifically, 97% of the City's workforce have a 3% wage increase effective for 2008 and 2009. Those 196 employees are affected by the CPI increases in the same manner as the Sergeants.

No indication was given by either Party that employee retention or turnover was a problem that needed to be addressed in this arbitration.

The City's position is supported by not only internal history and comparison but also by external comparables among Stanton Group 5 cities.

ISSUE SEVEN: SPECIALTY PAY 2008 - ARTICLE 21, SECTION 2

ISSUE EIGHT: SPECIALTY PAY 2009 - ARTICLE 21, SECTION 2

POSITION OF THE PARTIES

The Union is proposing to modify the specialty pay for Sergeants assigned to investigations from the current rate of \$225 per month to an additional 5% per month. The 2008 effect on the Union's percentage based proposal is to increase the

Investigation Sergeant specialty pay from \$225 to \$325 in 2008 based on the awarded wage increase of 3% for 2008. The City is opposed to any increase in the amount of specialty pay for Investigation Sergeant.

AWARD

The Employer's position is sustained.

RATIONALE

As a proponent of a change in the specialty pay provision, the Union bears the burden of proving a compelling reason for the change as well as the *quid pro quo* for the change. Arbitrators recognize that there is give and take that occur during negotiations and place the burden on the proponent of a change to demonstrate a need for the change and a trade-off for the change. The Union has failed to prove a compelling reason or the *quid pro quo* for the change in the specialty pay provision.

Police Chief Don Abbott testified that the City has a Sergeant assigned to the Drug Task Force and a Sergeant assigned to the Comprehensive Analysis, Prevention and Enforcement Resource Section (CAPERS). The application process for both Sergeant assignments includes Sergeants submitting letters of interest for the assignment, and within the last year, Sergeants have submitted letters of interest for those assignments at the \$225 specialty pay amount. Thus, there is no need to increase

the specialty pay based on the current demand for those assignments at the current rate of pay.

In addition to specialty pay, the Sergeants chosen for those assignments have additional perks unlike other Sergeants. The Drug Task Force Sergeant enjoys flexibility in scheduling, and that Sergeant is authorized a take-home car supplied by the Drug Task Force for the duration of the assignment. Similarly, the CAPERS Sergeant assignment includes a preferred work schedule consisting of Monday through Friday, 8:00 a.m. to 4:30 p.m., with weekends off with the exception of one weekend day per month.

The issue of a differential for the Sergeant is a costly economic item. The Police Department administration has made a budgetary commitment to the City Manager that the Sergeant assigned to the Drug Task Force and the CAPERS Sergeant will be cost-neutral. If the Union's position had been awarded, those assignments will no longer be cost neutral, and the Police Department administration would have in all likelihood eliminated those assignments. The elimination of those assignments would not benefit the City and, most certainly, would not benefit the Sergeants assigned to those assignments who would no longer receive the specialty pay.

The evidence discloses that LELS Police Officers assigned to Investigation, School Resource, Drug Task Force and Housing

receive specialty pay at 5% per month. The difference between the LELS Police Officers specialty pay provision and the LELS Sergeants contract is historical and dates back to 2003 when the Investigative Sergeant specialty pay provision was first incorporated in the Sergeants collective bargaining agreement. Since the 2003 LELS Sergeants contract, none of the LELS Sergeants collective bargaining agreements have included a percentage based specialty pay provision, and the LELS Sergeants unit has voluntarily settled contracts since 2003 without the inclusion of a percentage based specialty pay provision. Thus, it appears that no change is required in specialty pay based on past bargaining history.

The external comparison data supports the City's position. Of the cities in the Stanton Group 5 comparison group, only five cities provide any type of specialty pay for Sergeants. Of the five cities that provide specialty pay to Sergeants, four of the five cities provide a flat dollar amount - the average of which is less than the \$225 provided to Fridley Sergeants.

**ISSUE NINE: SEPARATION - SEPARATION BENEFIT PLAN -
ARTICLE 22, SECTION 1**

POSITION OF THE PARTIES

The Union has proposed to remove the date restrictive language, thereby opening the separation benefit plan for all

employees regardless of date of hire. Specifically, the Union seeks to eliminate the current separation benefit cap which limits the benefit to employees hired prior to January 1, 1986. The City is opposed to any change in the separation benefit.

AWARD

The Employer's position is sustained.

RATIONALE

Similar to the standard set forth in the specialty pay decision, as the proponent of a change in the eligibility for the separation benefit, the Union bears the burden of proving a compelling reason for the change as well as the *quid pro quo* for the change. The Union has not met its burden with regards to its proposed change.

In 1986, the City established a separation benefit plan effective January 1, 1986, for employees hired prior to that date. For those employees hired prior to January 1, 1986, they are eligible for a maximum separation benefit of up to \$4,000. This benefit was capped in 1986 and has remained limited to employees hired prior to January 1, 1986, since that date. One Sergeant was hired prior to 1986.

The LELS Police Officers do not have this separation benefit language in their contract. The IAFF has a very different separation benefit. The City's non-union employees do

not have the separation benefits. Clearly, there is no internal pattern that needs to be followed in deciding this separation benefit language.

The effect of the Union's position would be to open up the benefit for all employees regardless of their hire date. This is contrary to the internal pattern. The Union suggested that there was no internal pattern because the separation cut off dates differ for the various groups. This is noteworthy but not persuasive to sustain its position. The fact remains that all employee groups have a cap that limits this benefit to employees hired before a certain date. The Union's position to eliminate the cap is contrary to the internal pattern, and there is no reason to treat Sergeants differently with reference to the separation benefit.

The Union's proposal is a costly economic item. The cost of the Union's proposal is \$20,000. If this benefit were opened up for all City employees who have 10 years of service regardless of their hire date, the cost would be \$292,000. The Union's position is contrary to the budget realities in the context of the economic situation facing the City in the future days, months and years. The Parties should use whatever available revenues to benefit those that remain in the employ of the City rather than those leaving the City's employment.

**ISSUE TEN: HOLIDAYS - ADD FLOATING HOLIDAY -
ARTICLE 26, NEW SECTION**

POSITION OF THE PARTIES

The Union has proposed to add one floating holiday, commensurate with the Sergeant's regularly scheduled shift. The City opposes any increase in the number of paid holidays.

AWARD

The Employer's position is sustained.

RATIONALE

Similar to the other issues at impasse, as the proponent of a change in the holiday benefit, the Union bears the burden of proving a compelling reason for the change as well as the *quid pro quo* for the change. The Union has failed to meet its burden of proof.

Each of the other three employee groups within the City - LELS Police Officers, IAFF Firefighters and non-union employees - have 11 holidays. An award of the Union's proposal for a floating holiday would provide the Sergeants with one more holiday than all other City employees receive, including the LELS Police Officers. Both the Sergeants and the Police Officers have reached parity in regards to receiving the same number of paid holidays. As a result, there is no compelling reason to deviate from this parity.

The holiday benefit should be considered from the standpoint of internal consistency rather than the external marketplace. Consistency among all City employees in regards to this economic item is of great importance in maintaining labor relations stability. There is no reason to treat the Sergeants differently than other City employees with reference to this holiday fringe benefit.

Another important consideration is the cost of adding this holiday. The cost to the City of an additional holiday for the LELS Sergeants would have increased every year as wages increase. Moreover, had the Arbitrator awarded an additional holiday to the LELS Sergeants, LELS Police Officers and the IAFF Fire fighters and non-union employees would have expected consistent treatment, and the City's costs would have escalated. The estimated cost of adding an additional holiday to all City employees would be over \$65,000. The City can ill afford to add this benefit at this time with the anticipated economic problems facing the City and other governmental agencies.

**ISSUE ELEVEN: GRIEVANCE PROCEDURE - CHOICE OF REMEDY -
ARTICLE 7, NEW SECTION**

POSITION OF THE PARTIES

The City proposes adding the following new section to Article 7:

7.7 If, as a result of the written Employer response in Step 2 or 2a, the grievance remains unresolved, and if the grievance involves the discipline of an Employee who has completed the required probationary period, the grievance may be appealed either to Step 3 of Article 7 or through a procedure such as the Veteran's Preference Hearing. If appealed through the Veteran's Preference Hearing, the grievance is not subject to the arbitration procedure as provided in Step 3 of Article 7. The aggrieved Employee shall indicate in writing which procedure is to be utilized - Step 3 of Article 7 or the appeal procedure - and shall sign a statement to the effect that the choice precludes the aggrieved Employee from making a subsequent appeal through Step 3 of Article 7.

With respect to statutes under jurisdiction of the United States Equal Opportunity Commission, an employee pursuing a statutory remedy is not precluded from also pursuing an appeal under this grievance procedure.

The Union is opposed to any change in Article 7.

AWARD

The Union's position is sustained.

RATIONALE

As has been the theme in the last few issues, as the proponent of a change in the grievance procedure, the City bears the burden of proving a compelling reason for the addition of the choice of remedy clause language as well as the *quid pro quo* for the change. The Employer has failed to do so.

While the evidence demonstrates that the LELS Police Officers and the IAFF Firefighters both have choice of remedy provisions in their collective bargaining agreements, there is no showing that such a provision is necessary in the Sergeants

contract. The City has not demonstrated any problems with the current collective bargaining language. In fact, no employee in this bargaining unit has been terminated for disciplinary reason since 1980. This fact alone eliminates all reasonability and urgency from the City's proposal.

This issue to better left for traditional collective bargaining between the Parties in the context of a *quid pro quo*. There is no evidence of the Employer offering any *quid pro quo* with regard to adding their proposed choice of remedy language in the contract.

The 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 January 3, 2009, at Maple Grove, Minnesota.