

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

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

-and-

BMS Case No. 08-PN-0472

Blue Earth County, Minnesota

ARBITRATOR:

Christine D. Ver Ploeg

DATE & PLACE OF HEARING:

January 22, 2009
Blue Earth County Government Center
Mankato, Minnesota

DATE OF RECEIPT OF
POST-HEARING BRIEFS:

February 6, 2009

DATE OF AWARD:

February 22, 2009

ADVOCATES:

For the Union

Paula Johnston
IBT Local 320
3001 University Ave. SE #500
Mpls., MN 55414

For the Employer

Frank Madden
505 No. Hwy 169, #295
Plymouth, MN 55441-6444

INTRODUCTION

This interest arbitration has been conducted pursuant to Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. IBT Local 320 (hereinafter the Union) is the Exclusive Representative of the Custody Officers and Corrections Sergeants of the Blue Earth County Sheriff's Department (hereinafter Employer). The Union and the Employer have engaged in contract negotiations and agreed on all but the following items. Members of this bargaining unit are "essential employees" who cannot strike but who have the right to request interest arbitration upon reaching impasse. Minnesota Public Employment Labor Relations Act, §179A.01 - 179A.25. They have done so here.

ISSUES

The issues certified as being at impasse by the Minnesota Bureau of Mediation Services are:

1. Wages - What, If Any, Should General Wage Increase Be for 2008 - Art. 18.1
2. Wages - What, If Any, Should General Wage Increase Be for 2009 - Art. 18.1
3. Wages - What, If Any, Should General Wage Increase Be for 2010 - Art. 18.1
4. Lead Pay - What, If Any, Should Lead Pay Increase Be for 2008 - Art. 18.5
5. Lead Pay - What, If Any, Should Lead Pay Increase Be for 2009 - Art. 18.5
6. Lead Pay - What, If Any, Should Lead Pay Increase Be for 2010 - Art. 18.5
7. Shift Differential - What Amount, If Any, Should Employer Pay for Shift Differential - Art. 18.9
8. Post Employment Health Savings Plan - Should Employer Contribute 1 of Employee's Annual Income to MSRS Post Employment Health Care Savings Plan? - New

AWARD OVERVIEW

The Union's proposed wage increases are awarded, but all other proposals are denied. This award is based upon a determination that this bargaining unit should be awarded the same wage increase as will be received by every other County employee, union and non-union. However, the County's evidence that current economic climate and budget realities should preclude any additional economic improvements to this Agreement has been persuasive.

ANALYSIS

Generally

The two primary bases for decision in any interest arbitration are:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table or, in the case of essential employees, to settle a strike.

Although this determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.

(2) Seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

These bases in turn entail a two-fold analysis. First, arbitrators consider an employer's ability to pay. This issue is self evident: it serves no purpose to issue an award that an employer cannot fund and thus could never agree to in collective bargaining. However, a simple assertion of financial crisis does not alone warrant freezing wages and other benefits. It is not unusual for employers to claim financial exigency, and when they do so arbitrators closely scrutinize that claim.

If an employer's claims of inability to pay do not withstand scrutiny, and the evidence demonstrates that at least some financial improvement is possible, arbitrators next consider the comparability data. This step requires the arbitrator to evaluate the parties' proposals in two contexts: (1) considering the wages, benefits, and other cost items this employer gives to its other employee groups (internal comparables); and (2) considering what comparable employers provide to similar employees (external data).

The preceding analysis has been applied in making the following awards on the issues presented by the parties.

Issues 1-3: General Wage Increases for 2008, 2009, and 2010

County Position. 2% increase on January 1st of each year

Union position. 2% increase on January 1st and an additional 2% increase on July 1" of each year

Award: 2% increase on January 1st and an additional 2% increase on July 1" of each year

In reaching this award, I have considered the following evidence and argument:

A. Internal Comparables

Parties present evidence of “internal comparability”--evidence of the terms and conditions of employment an employer provides its other employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably by comparison. As noted above, an interest arbitrator must try to determine what agreements the parties would have struck for themselves if they had been able to do so. In making that determination evidence of the wages and benefits negotiated by the County’s other employee groups is very relevant.

In this case the Union demonstrated that every other union and non-union employee received the same wage increases that the Union is now requesting. (The Deputies contract is only settled through 2009, but that unit received the same increases in 2008 and 2009 that the Union is requesting for this bargaining unit.) This evidence has guided this award on this issue. I am persuaded that these unit members, who make up less than ten percent of the total number of County employees, should receive the same wage increases as every other employee will receive.

The fact that this bargaining unit is the only unit without a settled Agreement has been of great importance in reaching this decision. The County’s current economic realities, discussed below, are compelling. If there had not already been agreement concerning the wages of 90% of the County’s employees, those economic realities—which can fairly be characterized as having most dramatically occurred in December of 2008—may well have supported a smaller wage award. However, the timing of events has left this unit as an “outlier” among all other employee groups. The County will have to take serious measures to address the new extent of its budgetary challenges. In doing so, it is appropriate that all employees be part of the same “status quo” that will necessarily come under review

B. Ability to Pay

The Union argues that the County can afford to fund these proposals for these employees, and the evidence demonstrates that is the case. Awarding these proposals would not bankrupt the County. However, it is also true that Minnesota’s Public Employment Relations Act directs arbitrators in interest arbitrations to consider “obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.” Minn. Stat. Sec 179A.16, subd. 7.

It is true that the County agreed to a wage package for all of its other union and non-union employees in the face of already challenging economic conditions. That is one reason why the same wage package is now awarded to members of this bargaining unit.

However, there have been significant changes in the economy since the County settled those 2008-2010 collective bargaining agreements. Most notably, in the fall of 2008 the U.S. housing market collapsed. This triggered financial turmoil that the media daily likens to the Great Depression. The State is now experiencing its highest unemployment rate in years.

On December 4, 2008, the Minnesota Department of Finance announced the stunning news that the State's 2008-2009 deficit is \$ 426 million, and predicted to be at least \$ 5.2 billion and possibly as much as \$ 6 billion for 2010-2011. In response to this grim news, the State "unallotted" previously promised State aid to counties, cities, human service programs and higher education. On December 26, 2008, Blue Earth County was unallotted \$ 471,439 of State aid, funds upon which it had relied on making its 2008 budget.

In addition, the Governor's budget recommendations include up to a 2.41% reduction of levy plus aid payable in 2009, and up to a 4.14% reduction of levy plus aid payable to counties in 2010. The County Administrator has advised the County Board that the County could lose an additional \$ 1.9 million to \$ 8 million in state aid monies. In response, the County has instituted a virtual hiring freeze and is identifying areas where it can reduce, delay or eliminate services.

All of this evidence has been highly relevant in concluding that while these employees should be awarded the same wage increases as will be enjoyed by all other County employees, no other economic improvements can be justified.

II. Issues #4 - 6: Lead Pay for 2008, 2009, and 2010

Union's Position: increase lead pay by \$.50 each year (\$3.00 in 2008, \$3.50 in 2009, and \$4.00 in 2010).

County's Position: no increase in lead pay.

Award: No increase

The Union argues that every bargaining unit that receives lead pay has received the same increase that the Union is requesting for this unit. (The Deputies contract is settled only through

2009, but the deputies received the same increases in 2008 and 2009 that are being requested in this case.)

The County argues that this item should not be awarded because (1) these employees' responsibilities have not increased since the parties negotiated their last contract, and (2) the other settlements were reached long before the financial crises which occurred in November and December.

Discussion

Although the internal comparisons support granting the Union's position, it is nevertheless denied because current economic climate and budget realities preclude any economic improvements to this Agreement beyond the wage increases already awarded.

Unfortunately this unit has become a victim of the timing of its contract negotiations. Bargaining early and bargaining later both pose risks and advantages. In this case, this unit's bargaining later has meant that a proposal that may well have initially been supportable is no longer so because of unexpected and significant economic changes. The other settlements upon which the Union relies were reached prior to the financial crises which occurred in November and December. If this proposal had been presented prior to the December unallocation of State aid and related economic projections, this decision might be different. However, December brought a budget crisis of unexpected proportions. This issue is now brought to interest arbitration in the context of a new reality that cannot be ignored.

III. Issue # 7: Shift Differential

Union's Position: \$.50 per hour for all regularly scheduled hours between 6 p.m. and 6 a.m.

County's Position: No shift differential. (No change from current contract).

Award: No shift differential

The Union argues that shift differential, while not commonplace, is not unheard of among the comparable counties. Brown County pays its correctional employees an additional \$1.00 per hour for all hours worked while the courthouse is closed to the public. Waseca County pays its correctional employees an additional \$.10 per hour for hours worked between 3 p.m. and 11 p.m.,

and an additional \$.25 per hour for hours worked between 11 p.m. and 7 a.m. The Union submits that given the external market, its request for a \$.50 shift differential is not unreasonable.

The County notes that Sheriff's Department employees have never received a shift differential, and argues that this is not the time to begin doing so.

Discussion and Decision

I agree that neither the internal nor the external comparables support granting this benefit in these current economic times. This is particularly true given the preceding wage award.

IV. Issue #8: Post Employment Health Care Savings Plan

Union's Position: the employer shall contribute 1 % of each employee's annual income to MSRS Post Employment Health Care Savings Plan.

County's Position: no contribution (no change from current contract).

Award: No Change

The Union argues that its position is supported by internal comparisons: deputies have been receiving this same benefit for several years.

The County argues that neither internal nor external comparisons support awarding what would be a very costly benefit. This is particularly true given the current recession and economic times.

Discussion and Decision

I agree that neither the internal nor the external comparables support granting this benefit in these difficult economic times. The County agreed to provide this benefit to the LELS Deputies unit in 2000 under significantly better economic conditions, and in order to avoid the costs of interest arbitration. Since then no other union or non-union County employees have obtained this benefit in negotiations or otherwise.

By the same token, no external comparables support the Union's position. None of the counties in Economic Region 9 make an employer contribution to a post employment health care savings plan, and such contributions are very unusual in the State.

For these reasons this benefit is not awarded.

SUMMARY OF AWARD

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2% increase on January 1st and an additional 2% increase on July 1
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3. Wages - What, If Any, Should General Wage Increase Be for 2010 - Art. 18.1
2% increase on January 1st and an additional 2% increase on July 1
4. Lead Pay - What, If Any, Should Lead Pay Increase Be for 2008 - Art. 18.5
Not awarded
5. Lead Pay - What, If Any, Should Lead Pay Increase Be for 2009 - Art. 18.5
Not awarded
6. Lead Pay - What, If Any, Should Lead Pay Increase Be for 2010 - Art. 18.5
Not awarded
7. Shift Differential - What Amount, If Any, Should Employer Pay for Shift Differential -
Art. 18.9
Not awarded
8. Post Employment Health Savings Plan - Should Employer Contribute 1 of Employee's
Annual Income to MSRS Post Employment Health Care Savings Plan? – New
Not awarded

February 22, 2009



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