

IN THE MATTER OF THE ARBITRATION BETWEEN

TEAMSTERS LOCAL NO. 320,)	
)	
Union,)	INTEREST ARBITRATION
)	AWARD
and)	
)	
)	
FARIBAULT COUNTY)	
)	
Employer.)	BMS Case No. 08-PN-0677
)	

Arbitrator: Stephen F. Befort

Hearing Date: February 24, 2009

Record Closed: March 2, 2009

Post-hearing Briefs submitted: March 16, 2009

Date of Decision: April 3, 2009

Appearances:

For the Union: Paula R. Johnston

For the County: Susan K. Hansen

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota’s Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.30. Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 (“Union”), is the exclusive representative of a unit of Dispatcher/Jailers employed in the Faribault County Sheriff’s

Department (“County”). The unit currently consists of eight Dispatcher/Jailer employees.

The Union and the County have engaged in negotiations for a new contract but have been unable to reach an agreement regarding certain items under consideration. The Bureau of Mediation Services (“BMS”) certified the following six issues for interest arbitration:

1. Wages for 2008 - Wage Increase, If Any - Appendix A
2. Wages for 2008 - Steps, If Any – Appendix A
3. Wages for 2009 - Wage Increase, If Any - Appendix A
4. Wages for 2009 - Steps, If Any – Appendix A
5. Compensatory Time Bank - Compensatory Time Bank Maximum - Art. 18.6
6. Compensatory Time Bank - One-Time Use of Compensatory Time Hours Per Year - Art. 18.6

The matter proceeded to a one-day arbitration hearing at which each party was afforded the opportunity to present relevant evidence and data.

DISCUSSION AND AWARD

INTEREST ARBITRATION GUIDELINES:

1. *Replicate Voluntary Agreement.* The central goal of interest arbitration is to ascertain the agreement that the parties themselves would have reached if they had continued bargaining and concluded a voluntarily negotiated settlement. *See Dakota County and Law Enforcement Labor Services, Inc.*, BMS Case No. 96-PN-2190 (Flagler 1997).

2. *Internal Consistency.* Since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991 - 471.999, the principal factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to the other bargaining units in the same jurisdiction as well as those terms established for the jurisdiction’s unrepresented employees. *See Law Enforcement Labor Services, Inc. and Brown County*, BMS

Case No. 99-PA-1076 (Ver Ploeg 1999); Law Enforcement Labor Services, Inc. and Chisago County, BMS Case No. 95-PN-54 (Berquist 1995).

3. *Burden on Proponent for Change.* As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden on the party proposing a change in the parties' relationship to demonstrate the need for such change by clear and compelling evidence. See Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin 1997).

WAGES (Issues 1 and 3)

A. Positions of the Parties

Union:

Wages for 2008: An increase of 2.9% in the salary schedule effective January 1, 2008.

Wages for 2009: An increase of 3.0% in the salary schedule effective January 1, 2009.

Employer:

Wages for 2008: An increase of 2.0% in the salary schedule effective January 1, 2008.

Wages for 2009: An increase of 2.0% in the salary schedule effective January 1, 2009.

B. Discussion

The Union seeks a wage increase for unit members consistent with the internal pattern established for other County employees. The three other units represented by unions in the County each have settled for wage increases in the range of 2.9 to 3.0% for

both 2008 and 2009. In addition, the County has adopted an annual 3.0% wage adjustment for those employees who are unrepresented.

The County urges a lower 2.0% annual adjustment due to the budgetary pressures that it is currently facing. The County points out that Governor Pawlenty unallotted \$27 million in planned local government aid as a means of responding to a projected state budget shortfall in excess of \$4 billion. This resulted in a loss to the County of \$133,000, and further cuts in state aid are anticipated. The County also cited to recent arbitration decisions that have taken the current economic difficulties into account in determining interest arbitration outcomes.

This case represents a reversal in the positions usually asserted in interest arbitration disputes. In the run of cases, employers generally have sought to maintain a pattern of internal consistency, while unions most often have argued for a somewhat higher outcome based on external comparisons and other factors. In this case, however, the Union proposes a wage outcome based on internal consistency, while the Employer argues for a downward departure. In effect, the Employer argues that the internal pattern should give way to the deteriorating economic climate.

As noted above, most arbitrators have afforded principal weight to internal patterns in determining economic outcomes in interest arbitration. I believe that this principle should control when the economy is on the wane as well when it is on the rise. In both instances, internal consistency promotes fundamental fairness by treating the employees of the same employing entity in an equal fashion. While the Employer certainly is accurate in describing the economic challenges facing the County, it does not explain why the employees in this unit should bear the impact of this downturn in a

disproportionate fashion. The County, for example, has not taken steps to reduce the wage schedules for unrepresented workers or to reopen negotiations with other unions who represent County employees. Under these circumstances, it is neither necessary nor fair to diminish the wage adjustments for these eight employees as compared to other County workers.

A brief comment on external comparables is in order. The unit Dispatcher/Jailer employees are paid below the average of comparable employees in other Economic Development Region 9 counties. In part, this lower pay reflects the fact that Blue Earth County has fewer resources than most other Region 9 counties. An award of the Union's position would still leave the Dispatcher/Jailer employees below the average of the other Region 9 counties.

C. Award: The Union's position is awarded.

ADDITIONAL STEPS IN WAGE SCHEDULE (Issues 2 and 4)

A. Positions of the Parties:

Union: Add two additional steps to the wage scale effective January 1, 2008: a 10-19 year step and a 20+ year step.

Employer: Retain current wage schedule.

B. Discussion

The Union seeks to add two additional steps to the current six-step wage schedule. The Union urges an internal comparison with the current wage structure for unrepresented County employees which contains the same two steps sought to be added by the Union. The Union points out that the contract applicable to the AFSCME

Courthouse employee unit also provides for an eight-step ladder, and that a majority of Region 9 counties also utilize a wage structure that exceeds six steps.

The Employer submitted evidence that the current six-step structure was adopted in 1999 when the Jailer/Dispatchers were included in a combined law enforcement unit with the Deputy Sheriff employees. At that time, the exclusive representative - Law Enforcement Labor Services (LELS) – proposed the six-step structure as a means for unit employees to reach the maximum pay grade in a relatively short period of time. The Employer agreed to that proposal as a concession to LELS.

The Employer disputes the claim that the Union’s proposal is consistent with the internal pattern. Both the LELS and the Operating Engineer units continue to have the six-step ladder provided by the parties’ most recent contract. Central Services Director Brenda Ripley testified that the County added two steps to the non-union wage schedule in 2006 in order to bring the County’s pay practices into compliance with the Pay Equity Act. Ms. Ripley explained that the top step modification was aimed primarily at two specific classifications and did not have any immediate cost implications because of the length of service of the incumbent employees. Ms. Ripley also testified that the eight-step structure applicable to the AFSCME Courthouse unit is historical in nature and predates the 2006 modification applicable to unrepresented employees.

LELS has twice attempted to obtain the two additional steps for the Deputy Sheriff unit through arbitration. In both 2002 and 2005, arbitrators denied the request of LELS to add these two additional steps. LELS and Faribault County, BMS Case No. 02-PN-899 (Jacobs 2002); County of Faribault and LELS, BMS Case No. 05-PN-786 (Scoville 2005). In both instances, the arbitrators rejected the notion that the two

additional steps were necessary in order to provide internal pay equity. Although these decisions involve a separate bargaining unit, the two units are historically related and similarly situated.

Most significantly, the Union's proposal is very costly in light of the current economic climate. The new top step proposed by the Union, for example, would implement an immediate 9.0% step increase for three unit employees. In the end, the Union has not carried its burden of establishing a compelling justification to warrant the proposed alteration to the existing wage structure.

C. Award: The Employer's position is awarded.

COMPENSATORY TIME (Issues 5 and 6)

A. Positions of the Parties

Union:

No change to current contract language (*i.e.*, retain one hundred (100) hours/year compensatory time bank).

Employer:

Reduce compensatory time bank to a maximum of forty (40) hours per calendar year.

C. Discussion

Article 18.6 of the parties' most recent collective bargaining agreement provides a mechanism by which employees may accrue uncompensated overtime hours in order to fund future paid leave time. This provision states:

A compensatory time bank of up to one hundred (100) hours a year shall be established. Use of compensatory time shall be mutually agreed to between the Employer and the employee.

The Employer proposes to reduce the maximum compensatory time accrual amount from one hundred hours per year to forty hours per year. The Employer further seeks to cap the maximum time bank accrual at a total of forty hours per year, meaning that once an employee accrues forty hours in a year, he or she could not further replenish the bank to make up for any paid leave taken thereafter during the year.

The Employer contends that the current contract language has engendered a costly cycle by which employees “accrue, use, and accrue more” compensatory time. According to the County, this pattern complicates the scheduling of work and results in increased overtime pay obligations. The County asserts that its proposal provides a rational means to control costs during a time of budgetary stress.

The Union counters that the Employer’s proposal would actually increase costs since it would make the County responsible for time and one-half overtime pay for all overtime work not compensated by banked leave. In addition, the parties’ most recent contract provides the Employer with considerable control over the use of banked leave by requiring that such use “shall be mutually agreed to between the Employer and the employee.”

The Union also maintains that the County’s proposal is inconsistent with the existing internal pattern. The contracts applicable to the AFSCME and LELS units each provide for the same one hundred hour accrual limit as does the parties’ most recent contract. The Operating Engineers Contract is even higher with a two hundred and twenty hour annual accrual provision. These comparisons are significant since most arbitrators give internal comparisons greater weight than external comparisons when considering the appropriate level and structure of fringe benefit arrangements.

This issue, in essence, presents the mirror image of the preceding issue. Here, it is the Employer, rather than the Union that is seeking to alter the parties' prior contractual arrangement. Here again, the internal pattern is consistent with the status quo arrangement. And, as with the previous issue, the party seeking the altered bargain has been unsuccessful in attempting to secure a comparable change involving the LELS unit via interest arbitration. LELS and Faribault County, BMS Case No. 02-PN-899 (Jacobs 2002).

These facts warrant a similarity in outcomes. Since the Employer has not shown a compelling justification for its proposed alteration of the compensatory time bank provision, its proposal must be rejected.

AWARD: The Union's position is awarded.

Dated: April 3, 2009

Stephen F. Befort
Arbitrator