

IN THE MATTER OF THE ARBITRATION BETWEEN

Law Enforcement Labor Services,)
The Union,)
) **INTEREST ARBITRATION**
) **AWARD**
and)
)
)
County of Morrison,)
the Employer.) **BMS Case No. 09-PN-0267**

Arbitrator: Barbara C. Holmes

Hearing Date: May 22, 2009

Close of Record: May 22, 2009

Date of Decision: June 2, 2009

Appearances:

For the Union: Dennis Kiesow, Business Agent
Law Enforcement Labor Services
St. Paul, Minnesota

For the Employer: Scott Lepak, Attorney at Law
Barna, Guzy & Steffen, Ltd.
Minneapolis, Minnesota

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota’s Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. Law Enforcement Labor Services (herein “the Union”) is the exclusive representative of a unit of licensed law enforcement employees of Morrison County (herein “the Employer”).

The Union and the Employer have engaged in contract negotiations and have been successful in reaching agreement on some, but not all, of the items under consideration. The Bureau of Mediation Services (BMS) has certified the remaining items for interest arbitration and the parties have selected the undersigned neutral Arbitrator to hear evidence and render a final and binding decision on the unresolved issues. A one-day hearing was held and each party was given a full opportunity to present its positions through the testimony of witnesses, the introduction of exhibits and the submission of oral arguments. The parties chose not to file written briefs.

ISSUES AT IMPASSE

The BMS has certified the following issues for arbitration:

ISSUE #1 - WAGES - 2009

ISSUE #2 - WAGES - 2010

ISSUE #3 – FIELD TRAINING OFFICER DIFFERENTIAL

ISSUE #4 – UNIFORMS (withdrawn at hearing)

ISSUE #5 - DURATION

BACKGROUND FACTS

Morrison County is located in the central part of Minnesota and has a population of approximately 33,000. It is the 17th largest county in the state and ranks 25th in population. The county seat and largest city of Morrison County is Little Falls, with a population of approximately 7700.

The Union and Employer are presently parties to a collective bargaining agreement that expired by its terms on December 31, 2008, but remains in effect in accordance with Minn. Stat. Sec. 179A.20, subd. 6.

The Union represents licensed deputies employed by the Employer's Sheriff's Office. At the time of the arbitration there were 13 Deputies, two Sergeants and one Bailiff in the bargaining unit. Currently the top pay for Deputies is \$24.58/hr., for Sergeants is \$27.65/hr., and for Drug Task Force Deputies is \$26.59.

DISCUSSION AND AWARD

Two important guidelines are generally followed by interest arbitrators in making their decisions: 1) ascertain the agreement that the parties themselves would have reached had they been able to conclude a voluntarily negotiated settlement; and 2) absent compelling reasons to do so, avoid awards that significantly alter the bargaining unit's relative standing, either internally or externally.

ISSUES #1 and #2 - WAGES – 2009 and 2010

A. Final Positions of the Parties

Union: **2009:** Increase wage schedules by a market adjustment of \$1.00/per hour in addition to a 4% general wage increase; in the alternative, the Union has requested a 3.38% general increase comparable to that received by the Jail/Dispatcher bargaining unit.
2010: Increase wages 4%

Employer: **2009:** Increase wages 1.0%
2010: The County is requesting a one-year contract; in the event a two-year contract is awarded the Employer's position is to increase wages 1.0%.

B. Award.

2009: 1.0% increase
2010: See Issue #5 - DURATION

C. Discussion.

Interest arbitrators generally look at four factors in determining wage rates: the employer's ability to pay the award, adjustments in the cost of living and other economic data, internal wage comparisons, and external wage comparisons.

1. Ability to Pay.

The first step in determining the cost items in interest arbitration is to consider the employer's ability to pay the award. Minn. Stat. Sec. 179A.16(7) provides, in part, as follows:

In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.

Both parties have submitted evidence regarding the costs of their respective proposals and the ability of the Employer to pay these costs. The Union argues that the Employer is financially healthy and has adequate cash reserves to pay the cost of the Union's proposed wage increases. The Employer argues that it is experiencing a major loss in revenues due to the downturn of the national and state economy. The Employer asserts it cannot afford the Union's proposal because of the extensive budget cuts it has been required to make to address this loss of revenues. As will be discussed below, I find that the Employer's statutorily-defined ability to pay the proposed wage increase is considerably limited.

The evidence shows that the State of Minnesota is experiencing a budget deficit of historic magnitude. This in turn is having a significant impact on Minnesota counties because they receive a large portion of their revenue from state-funded Local Government Aid. As part of a plan to address a predicted budget shortfall of \$426 million in the State's budget for FY2009, the Minnesota Governor unallotted \$54 million in Local Government Aid in December of 2008. In turn, most Minnesota counties were forced to decrease their 2009 budgets to address this loss of revenue. The Employer lost \$276,302 in Local Government Aid due to the unallotment. To address this revenue loss, the Employer reduced its current budgeted expenditures for 2009.

During the most recent legislative session the Minnesota Legislature and Governor were unable to agree on a solution to address the impending state deficit of \$4.847 billion for FY2010-2011. The Governor has stated that he will not convene a special legislative session to continue working on the issue and intends to use his power of unallotment to balance the budget. The Employer expects to have the amount of Local Government Aid it typically receives reduced by \$419,123 in 2009 and \$690,342 in 2010.

In 2009 the Employer also anticipates losing an additional 7.85% of its revenues - \$479,517 – from a loss of various types of fees it charges. Another major source of revenue for Minnesota counties is property taxes. Because housing values have decreased substantially in recent years, there will likely be a decrease in future valuations for property tax purposes. This will result in more lost revenues.

The Union submitted reports from the State Auditor’s Office regarding the financial performance of the Employer in 2006 and 2007. In general, these reports show that the Employer has been financially healthy in the past. But the overall economic climate changed drastically at the end of 2008. The Employer’s County Finance Director stated the following in a memo to the County Board:

[D]uring 2008, the county did very well financially; the County Board along with Department Heads did a very good job in keeping within their budgets for 2008. ... With the County being in the financial shape that it is will help as we deal with the financial crisis that will affect the county in 2009 and beyond.

The current cost of wages for this bargaining unit is \$813,592. The Union has estimated the cost of its wage proposals as follows:

| | |
|-------------------------------------|--------------|
| 2009: 4% market increase + 4% COLA: | \$ 65,998.40 |
| 2010: 4% COLA: | \$ 35,328.80 |

The Union asserts that the Employer has a significant balance in its cash reserve fund to pay for the cost of the Union’s proposed wage increases. The Employer states that this fund is used for one-time unbudgeted expenses and for cash flow management and will be negatively impacted by the current and anticipated revenue losses.

I find that while the Employer *could* pay the proposed wages increases, the issue is whether in doing so it is meeting its statutory obligation to “efficiently manage and

conduct [its] operations within the legal limitations surrounding the financing of these operations.” Given the extent of the revenue losses that the Employer is experiencing, the projected budget cuts totaling \$1,557,557 for 2009, and a continuing uncertainty of an economic recovery, I find that the Employer would not meet this obligation if the Union’s proposed wage increases are granted.

2. Cost-of-Living and Other Economic Factors.

The amount of change in the cost-of-living over the previous contractual period is often used by parties to an interest arbitration to support their wage proposals. To the extent these costs have increased, the purchasing power of wages has decreased. The U.S. Department of Labor’s Consumer Price Index (CPI) is typically used as a measure of cost-of-living increases or decreases. The Union submitted CPI data showing an overall increase of 4.3% for 2008. But it also noted that between April of 2008 and April of 2009 there was a 2.3% decrease in the CPI.

Evidence submitted by the Employer shows the recent changes to the Midwest/Non-Urban CPI:

| | |
|----------------|----------------|
| November 2008: | 0.5 % increase |
| December 2008: | 0.3% decrease |
| January 2009: | 0.3% decrease |
| February 2009: | 0.2 % decrease |
| March 2009: | 0.8% decrease |
| April 2009: | 1.5% decrease |

The Employer also submitted evidence showing wage increases given in the past two years have kept up with CPI increases. In 2008 the Union received a wage increase of 3.25% and in 2008 an increase of 3.0%. The CPI increases for those years were 3.7% and 2.7, respectively.

I find that that the relevant CPI data does not support a wage increase of any significant amount for 2009.

3. Internal Comparability. Evaluating cost issues through the analysis of internal wage and benefit comparisons suggests what the Union and County would have agreed to had they been able to conclude a voluntarily negotiated settlement. Additionally, the Local Government Pay Equity Act (LGPEA) at Minn. Stat. 471.992, subd. 2, provides as follows:

“In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179.25, the arbitrator shall consider the equitable compensation standards established under section 471.993, together with other standards appropriate to interest arbitration.”

The “other standards” set forth in the statute require internal comparisons (with all other employees of the employer) and external comparisons (with similar positions of other employers).

a. Compliance with the LGPEA. The Union submitted evidence showing that the Employer is currently in compliance with the LGPEA. It also submitted evidence showing that the Employer will remain in compliance if the Union’s proposed wage increases for 2009 are granted.

The Employer argues that while it will remain in compliance if the Union’s proposed wage increases are granted, the gap between the “predicted pay” for this bargaining unit’s “male-dominated classifications” and the “predicted pay” for the rest of the Employer’s classifications, including female-dominated classifications, will increase. The Employer does not believe that this is favorable for pay equity considerations.

“Predicted pay” is a complex computation devised by the State of Minnesota to analyze the equitableness of pay differences between male-dominated job classifications and female-dominated classifications in local units of government. If a jurisdiction has an “underpayment ratio” of 80% or below for its female-dominated classes it may be required to increase wages of female-dominated classes. In the State of Minnesota’s Compliance Report from Morrison County dated December 19, 2008, the Employer has a current underpayment ratio of 86.6%. If the Union’s proposed wage increases for 2009 are awarded the Employer’s underpayment ratio will actually increase to 132.4%.

While this increase may seem counterintuitive, it is an accurate computation under the State of Minnesota’s test. Therefore, I find that the Employer will remain in compliance with the LGPEA with the Union’s proposed wage increase for 2009.

b. Internal equity. The wage increases given to the Employer’s employees not in the Union’s bargaining unit are helpful in determining what the parties would have agreed to had they been able to reach an agreement. The Employer has a total of 267 employees. Of this total, 136 are unrepresented, 24 are Public Works employees

represented by AFSCME Council 65, 56 are Social Services employees represented by AFSCME Council 65, 34 are Jail/Dispatcher employees represented by Teamsters Local 320, and the remaining 16 are members of the bargaining unit represented by the Union in this case. Wages increase for 2009 are as follows:

- Unrepresented employees: 1%
- Public Works employees: 1%
- Social Services employees: 1%
- Jail/Dispatcher employees: 1% + pay grade adjustment = 3.4% approx.

The Union argues that it should receive a wage increase comparable to that given to the Employer's only other law enforcement unit – the Jail/Dispatcher employees. The Employer argues that the pay grade adjustment was given to the Jail/Dispatcher employees to bring their job-points-based pay range into the same pay system the Employer uses for its 136 unrepresented employees. It admits that five of these employees are now paid above their designated points but explains that this was necessary to avoid compression with the lower salary grades.

Historically, the Employer's various employee groups have received the following general wage increases:

| | <u>2005</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> |
|----------------------------|-------------|-------------|-------------|-------------|
| Unrepresented employees: | 2.25% | 2.50% | 3.00% | 3.25% |
| Public Works employees: | 2.25% | 2.50% | 3.00% | 3.25% |
| Social Services employees: | 2.25% | 2.50% | 3.00% | 3.25% |
| Jail/Dispatcher employees: | 2.00% | 2.50% | 3.00%* | 3.25% |
| Sheriff's Deputies: | 2.00% | 2.50% | 3.00% | 3.25% |

*this unit also received a 5% market adjustment increase

I find the Employer's explanation of the pay grade adjustment to be reasonable and find that this adjustment should not be taken into account in determining internal consistency. I further find that the Employer's historical wage increases show a high degree of internal consistency.

4. External Comparability. An analysis of wages of similar employees in comparable work situations of *different* employers is appropriate in interest arbitration. Most external comparisons are made to entities that are similar in function, size and financial resources. Geographical proximity of the comparison entities is also relevant as most labor markets are locally based.

a. Appropriate Comparison Group. For its comparison group the Union has relied on the counties that are contiguous to Morrison County. These counties were also used by arbitrators in the two previous interest arbitrations conducted in 1984 and 1998. The counties in this comparison group show the following populations and tax capacities:

| <u>County</u> | <u>Population</u> | <u>Tax Capacity</u> |
|---------------|-------------------|---------------------|
| Stearns | 128,522 | 93,765,286 |
| Crow Wing | 52,698 | 72,557,487 |
| Benton | 35,110 | 21,840,518 |
| Morrison | 31,041 | 20,372,733 |
| Cass | 25,644 | 39,678,924 |
| Todd | 23,931 | 12,517,854 |
| Mille Lacs | 21,355 | 15,118,398 |

The wage increases given by these counties for 2009 are as follows:

| | |
|------------|---|
| Stearns | 11.16% (3% COLA + market based adjustment) |
| Crow Wing | 3.00% |
| Benton | 2.99% |
| Morrison | |
| Cass | 3.01% |
| Todd | 4.06% |
| Mille Lacs | 9.48% (market based adjustment to top of range) |

Making a valid external market comparison using these counties is extremely challenging. First of all, several of these wages increases were negotiated prior to the economic downturn occurring in the fall of 2008. Secondly, two of the counties made market rate adjustments that typically go beyond a COLA adjustment. Thirdly, the inclusion of Stearns County and Crow Wing County in the comparison group is questionable because of their notably larger populations and tax capacities. Finally, a top-to-bottom ranking of such a small group is of marginal use.

Assuming the Employer's 1% increase was awarded, a comparison of the five smallest counties would yield an average top wage for 2009 of \$4463.40. The Employer's top wage for 2009 would only be 3.7% below the average. On the other hand, it is clear that the Employer's proposed increase for 2009 will put Morrison County at the bottom of the comparison group.

5. Summary of Wage Rate Analysis: I have found that the Employer cannot “efficiently manage and conduct [its] operations within the legal limitations surrounding the financing of these operations” if the Union’s wage proposal is granted, that the relevant CPI data does not support a wage increase of any significant amount for 2009, and that the Employer’s historical wage increases show a high degree of internal consistency. On the other hand I have found that the Employer would remain in pay equity compliance under the Union’s proposed wage increase and that the Employer’s proposed wage increase of 1% will result in the Union’s employees being ranked last in top pay in a comparison with contiguous counties. However, I find that the Employer’s statutorily defined inability to pay and the high degree of internal wage consistency clearly outweigh the modest external inconsistency. **The Employer’s proposal for a 1% wage increase for 2009 is awarded.**

ISSUE #3 – FIELD TRAINING OFFICER DIFFERENTIAL

The Union has proposed that when deputies are performing the duties of a Field Training Officer they receive an additional \$1.00 per hour wage differential. Testimony provided at the hearing established that a Field Training Officer provides training to newly hired deputies. Because of the additional duties and responsibilities associated with this task, an increase in the hourly wage while conducting these duties is being sought. The Union points out that the Employer’s other law enforcement unit received this differential for their training officers during the last round of bargaining.

In *International Association of Fire Fighters, Local 4115 and City of Bloomington*, B.M.S. Case No. 02-PN-462 (2002), Arbitrator Stephen Befort stated the following:

As a general proposition, an interest arbitrator should not alter long standing contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden of the party proposing a change in the parties’ relationship to demonstrate the need for such change by clear and compelling evidence.

While the Union presents an argument that should be persuasive at the bargaining table, I do not find it rises to the level of “clear and compelling” needed by an arbitrator to award such a change. **The Employer’s position is awarded.**

ISSUE #4 - UNIFORMS

At the commencement of the hearing the parties stated that they had reached agreement on Issue #4, Uniforms.

ISSUE #5 - DURATION

The Union has proposed a contract with a duration of two-years and the Employer has proposed a one-year contract. In *Law Enforcement Labor Services and The City of New Brighton*, B.M.S. Case 04-PN-235 (2004), Arbitrator Fogelberg decided a contract duration issue by reviewing the length of the parties' agreements historically and the availability of sufficient comparison data.

To support its position the Union submitted evidence of the duration of previous contracts between the parties. Since 1991, the parties have had seven contracts of a two-year duration and three contracts of a three-year duration. Furthermore, the Union notes that four out of the six comparison counties have settled for 2010,

Normally this evidence would clearly support the Union's request for a two-year contract. But several of the comparison counties settled prior to the economic downturn that occurred in the fall of 2008. Given the current economic uncertainty, to award a contract with a duration of more than one-year would create a substantial risk for both the employees and the Employer. **The Employer's proposal for a one-year contract is awarded.**

Dated: June 2, 2009

Barbara C. Holmes, Arbitrator