

IN THE MATTER OF THE ARBITRATION BETWEEN

RECEIVED BLS-

3 SEP 09 11:15

| | | |
|-------------------------|---|---------------------|
| LAW ENFORCEMENT LABOR |) | MINNESOTA BUREAU OF |
| SERVICES, INC., |) | MEDIATION SERVICES |
| |) | CASE NO. 09-PN-0698 |
| |) | |
| Union, |) | |
| |) | |
| and |) | |
| |) | |
| THE CITY OF MINNETONKA, |) | DECISION AND AWARD |
| |) | OF |
| Employer. |) | ARBITRATOR |

APPEARANCES

For the Union:

Dean Mann
 Business Agent
 Law Enforcement Labor
 Services, Inc.
 327 York Avenue
 St. Paul, MN 55130-4039

For the Employer:

Frank J. Madden
 Frank Madden & Associates
 Attorneys at Law
 Suite 295
 505 North Highway 169
 Plymouth, MN 55441-6444

On July 21, 2009, in Minnetonka, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act ("PELRA") to resolve collective bargaining issues about which the parties are at impasse. Post-hearing briefs were received by the arbitrator on August 4, 2009.

BACKGROUND

The Employer is the City of Minnetonka, a suburb of Minneapolis, Minnesota, with a population in 2008 of about 51,500. The Union is the collective bargaining representative of eight non-supervisory employees of the Employer, who are classified as Dispatchers.

The Union and the Employer are parties to a labor agreement that has a stated duration from December 18, 2005, through December 27, 2008. Because they have not yet agreed to all of the terms of a new labor agreement, they continue to operate under the terms of that labor agreement, which I may sometimes refer to as the "current labor agreement" or the "2006-2008 labor agreement." They have successfully negotiated most of the provisions of their new labor agreement, but have reached impasse about several bargaining issues, described hereafter. In this proceeding, they seek to use the arbitration procedures established by PELRA to resolve the issues at impasse.

On April 1, 2009, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to five collective bargaining issues that are to be resolved in this arbitration proceeding. I refer to these issues by the following titles:

- Issue 1. Contract Duration.
- Issue 2. Compensation.
- Issue 3. Incentive Pay Program.
- Issue 4. Severance.
- Issue 5. Shift Differential.

In presenting its final positions to the Bureau of Mediation Services, the Union withdrew its proposal relating to

the Incentive Pay Program, thus settling Issue 3, and, at the hearing, the Union withdrew its proposal relating to Shift Differential, thus settling Issue 5.

The Employer employs about 238 employees. It negotiates with unions representing employees in four bargaining units -- eight Dispatchers represented by the Union, forty-nine Maintenance Workers represented by IUOE, Local 49, forty-four Police Officers represented by Teamsters, Local 320, and eleven Police Sergeants also represented by Teamsters, Local 320. The remaining 126 employees of the Employer are not represented by a union.

As I describe below, at the hearing, the parties made alternative proposals about Contract Duration that are contingent on the award made with respect to Compensation. To facilitate understanding of the parties' positions on Contract Duration, I give the following preliminary description of the multi-part system of compensation that is established in Appendices A and B of the current labor agreement, as amended by the parties in July of 2007, during the term of the agreement.

Appendix A establishes a schedule of "wage rates," using a starting step and four annual step increases. During 2008, the monthly wage rates thus established were the following:

| <u>Step 1</u> <u>Start</u> | <u>Step 2</u> <u>One Year</u> | <u>Step 3</u> <u>Two Years</u> | <u>Step 4</u> <u>Three Years</u> | <u>Step 5</u> <u>Four Years</u> |
|-------------------------------|----------------------------------|-----------------------------------|-------------------------------------|------------------------------------|
| \$3,864.99 | \$3,972.45 | \$4,079.75 | \$4,187.21 | \$4,294.51 |

The wage schedule notes that the Step 1 wage rate is equal to 90% of the Step 5 wage rate, that the Step 2 wage rate

is equal to 92.5% of the Step 5 wage rate, that the Step 3 wage rate is equal to 95% of the Step 5 wage rate, and that the Step 4 wage rate is equal to 97.5% of the Step 5 wage rate.

Appendix A also establishes what is referred to as a "market adjustment." The original version of the 2006-08 labor agreement established the market adjustment in language substantially the same as the language the parties had used for many years -- when they obtained information about wages paid in comparison cities from the "DCA Stanton Group Twin Cities Salary Survey." Because that survey stopped gathering such information, the parties' amendment of July, 2007, changed the designated source of wage information to that provided in the League of Minnesota Cities Metro Area Salary Survey.

The parties' July, 2007, amendment of Appendix A, which appears below, provides that the market adjustment for 2007 is included in the wage schedule, as I have reproduced it just above:

Appendix A of the agreement is amended as attached to reflect the 2007 market adjustments. The overall wage increase for 2007 is 4.31%. This reflects the 3.0% increase on the base wage rate and an additional 1.31% market adjustment.

Appendix A is additionally amended as follows;

For 2007, the market adjustment will be determined using the 2006 League of Minnesota Cities Metro Area Salary Survey. The comparison cities will include those five (5) metro-area cities immediately larger than Minnetonka in population and those five (5) metro-area cities immediately smaller than Minnetonka in population.

Minnetonka's 2006 maximum wage rate for public safety dispatchers as listed in the 2006 survey will be compared to the 2006 weighted mean for public safety dispatchers

for the above-noted comparison cities. If Minnetonka's maximum wage rate is above the weighted mean, no market adjustment will be made in 2007. If Minnetonka's maximum wage rate is below the weighted mean, the public safety dispatchers' maximum wage rate will be adjusted by the percentage difference between Minnetonka's maximum wage rate and the weighted mean of the comparison group. Each remaining wage step will be adjusted accordingly.

For 2008, the market adjustment will be determined using the 2007 League of Minnesota Cities Metro Area Salary Survey. The comparison cities will include those five (5) metro-area cities immediately larger than Minnetonka in population and those five (5) metro-area cities immediately smaller than Minnetonka in population.

Minnetonka's 2007 maximum wage rate for public safety dispatchers as listed in the 2007 survey will be compared to the 2007 weighted mean for public safety dispatchers for the above-noted comparison cities. If Minnetonka's maximum wage rate is above the weighted mean, no market adjustment will be made in 2008. If Minnetonka's maximum wage rate is below the weighted mean, the public safety dispatchers' maximum wage rate will be adjusted by the percentage difference between Minnetonka's maximum wage rate and the weighted mean of the comparison group. Each remaining wage step will be adjusted accordingly.

Appendix B of the current labor agreement establishes two additional forms of compensation, Incentive Pay and Performance Pay (also referred to by the parties as "Merit Pay").

The Incentive Pay program allows Dispatchers and one other group of City employees, Police Officers, to receive an annual lump sum of up to 3% of "base pay," which does not become a part of the wage rate carried over from year to year. Each employee may choose to participate in one, two or three of five possible Incentive Pay categories -- continuing education, community service, skill assessment, wellness/fitness and special skills. For each category the employee participates in, up to the limit of three, the employee receives 1% of base pay. Features of the Incentive Pay program are set out in Appendix B and, in addition, Appendix B provides that details of the

program may be established by administrative policy, subject to meet and confer discussions between the Union and the Employer.

The Performance Pay or Merit Pay program applies to all City employees, including non-union employees. It provides that employees with at least one year of service are to receive annual "organizational performance pay" of up to \$100, depending upon the grade that the City Council gives to the achievement of "organization-wide goals." In addition, employees may receive up to 1.5% of "base pay" as "departmental performance pay" for achievement of "department-wide goals," as determined by a "representative group of employer, union and other police department employees." These payments are annual lump sum payments and do not become a part of the wage rate carried over from year to year.

ISSUE 1: CONTRACT DURATION
ISSUE 1: COMPENSATION

The Union's Position.

The Union proposes that the new labor agreement have a two-year term, from January 1, 2009, through December 31, 2010.

The Union's final position on Compensation, as presented to the Bureau of Mediation Services, is set out below:

Article XIV - Appendix A - Wages

A general increase of 2.75% effective January, 2009.
A general increase of 2.85% effective January, 2010.

A Market adjustment of 2% effective January 1, 2009.
A Market adjustment of (to be determined) effective January 1, 2010.

Market adjustment language: Change to read:

For 2009, the market adjustment for the Minnetonka public safety dispatchers will be determined in the following manner:

- The Cities of Eden Prairie, Edina and St. Louis Park will be compared to Minnetonka.
- For 2009, the average of the top wage rates for Eden Prairie, Edina and St. Louis Park will be compared to the top wage rate for Minnetonka for 2008.
- If the average top rate is greater than Minnetonka's top rate, the difference shall be given to the Minnetonka dispatchers as a market adjustment effective the first pay period of 2009.
- If the average is less than the Minnetonka top rate, there will be no market adjustment.

To determine the market adjustment for 2010, the same procedure will be completed using the same 2009 top wage rates for the same cities.

At the hearing the Union made one change in its position on Compensation, proposing that the "general" wage increase of 2.85% that it had proposed for 2010 be changed to a general wage increase of 1%.

The Employer's Position.

In its final position as presented to the Bureau of Mediation Services, the Employer proposed that the term of the new labor agreement be one year, "effective as of December 26, 2008, through December 24, 2009, or until a successor agreement is reached, whichever is later."

The Employer's final position on Compensation, as presented to the Bureau of Mediation Services, is set out below:

2009: 1% general wage increase (see attached schedule).
Delete market adjustment language because of one year agreement (see attached).

The wage schedule attached to the Employer's final position shows annual, monthly and hourly rates. Below, I set out a schedule that shows only the monthly wage rates that are shown

in the Employer's final position, deleting the annual and hourly rates for simplicity:

| <u>Step 1</u> <u>Start</u> | <u>Step 2</u> <u>One Year</u> | <u>Step 3</u> <u>Two Years</u> | <u>Step 4</u> <u>Three Years</u> | <u>Step 5</u> <u>Four Years</u> |
|-------------------------------|----------------------------------|-----------------------------------|-------------------------------------|------------------------------------|
| \$3,903.81 | \$4,012.15 | \$4,120.65 | \$4,228.99 | \$4,337.49 |

At the hearing, after the Union revised its final position on Compensation for 2010 by reducing the general wage increase it sought for that year from 2.85% to 1%, the Employer proposed alternatives to its positions on Contract Duration and Compensation as originally presented to the Bureau of Mediation Services. The Employer now proposes the following contingent alternative to its original positions on those issues -- that it would accept a contract term of two years, with a 1% general wage increase for 2010 (as well as 1% for 2009), provided that the following market adjustment language is also awarded:

For 2010, the top base pay rate for Minnetonka public safety dispatchers will be multiplied by the 2010 base pay increase determined by the arbitrator. Using 2009 League of Minnesota Cities salary data for the cities of Bloomington, Eden Prairie, Edina, Hopkins, Richfield and St. Louis Park, the average weighted mean of these cities will be multiplied by the 2010 base pay increase for Minnetonka dispatchers as determined by the arbitrator. These two rates will be compared, and the higher of the two will be the 2010 top pay rate for Minnetonka.

Decision and Award.

The market adjustment formula that appears in the parties' current labor agreement, which I have set out above at pages 4 and 5, is similar to the formula that has been used for many years to determine market adjustments for all employees of the City -- though, as I have noted, it no longer uses information

from DCA Stanton in its salary survey. (Hereafter, for ease of reference, I may refer to the kind of market adjustment formula that appears in the current labor agreement as the "historical market adjustment formula.") The Union proposes to change two of the features of that formula. First, it would use only three comparison cities, Eden Prairie, Edina and St. Louis Park, in the comparison base, and second, it would derive the market adjustment from a comparison of the average top wage rates of Dispatchers in those cities rather than from a comparison of the average weighted mean of wage rates of all Dispatchers in each of those cities.

The parties agree that, because the ten cities below and above Minnetonka in population do not all use Dispatchers, a lesser number of cities should be specified as the comparison cities, but they disagree about the cities that should be in that comparison base. The Employer proposes that six cities be used, Bloomington, Eden Prairie, Edina, Hopkins, Richfield and St. Louis Park, arguing 1) that a larger number of cities is needed in the base to avoid distortions, 2) that the Union agreed temporarily to use the six cities it proposes in late 2008, when the parties discussed the problem, 3) that the Union's selection of Eden Prairie, Edina and St. Louis Park "cherry-picks" cities for their high wage rates, 4) that this group is balanced by the presence of Bloomington, with its very large population, and Hopkins and Richfield, with their smaller populations, and 5) that Hopkins should be included because it is adjacent to Minnetonka. The Union argues 1) that the three cities in its proposed comparison base are most similar to

Minnetonka in area, population and demographics, and 2) that the Employer's proposed group includes the much smaller City of Hopkins, with lower wage rates for Dispatchers that distort a proper market comparison.

The Union argues that comparison of top rates to top rates is fairer than comparison of the weighted means because top rates are easily obtainable from an examination of a few labor agreements while the wage rate paid to each Dispatcher in the comparison cities -- information needed to determine a weighted mean -- is more difficult information to obtain and is subject to manipulation in its gathering. The Union also argues that comparisons of the mean of wage rates paid to all employees may be distorted by varying numbers of steps to the top wage rate and varying components of compensation that may not be included in determining the wages paid to other Dispatchers. The Employer argues that the comparison of the weighted means of all Dispatchers' wage rates should be retained because it is a primary component of the historical market adjustment formula, which has long been used and still is used to determine market adjustments for all of its employees, both union members and non-union members. The Employer notes that the other components of compensation -- the Incentive Pay program and the Performance (Merit) Pay program, not provided to Dispatchers by other cities, justify retention of the weighted-mean component of the historical market adjustment formula.

The labor agreement that covers Police Officers, between the Employer and Teamsters, Local 320, has a one-year duration,

from December 26, 2008, through December 24, 2009 (hereafter, I refer to this agreement as covering 2009). It provides a "general increase" of 2.75%, and no market adjustment for 2009.

The labor agreement that covers Police Sergeants, between the Employer and Teamsters, Local 320, has a two-year duration, from December 26, 2008, through December 23, 2010; hereafter, I refer to this agreement as covering 2009 and 2010. For 2009, it provides a "general increase" of 2.75% and a market adjustment of 0.5%. For 2010, it provides a "general increase" of 2.85% and a market adjustment yet to be determined, but it appears that the 2010 market adjustment will use the historical market adjustment formula. The Employer presented evidence that it has reopened bargaining with Teamsters, Local 320, in an effort to obtain a reduction in the general increase for Police Sergeants for 2010 from 2.85% to 1.0%.

The labor agreement that covers Maintenance Workers, between the Employer and IUOE, Local 49, has a three-year duration, covering 2009, 2010 and 2011. As it was first settled, it provided for a general increase of 2.75% in 2009, of 2.85% in 2010 and of 2.85% in 2011. In addition, that agreement provided for market adjustments in each of those years using the historical market adjustment formula. The Employer has renegotiated the labor agreement with IUOE, Local 49, obtaining a reduction in the general increases for 2010 and 2011 from 2.85% in each of those years to 1% in each of those years. The Employer obtained this amendment by agreeing to lay off no Maintenance Workers during 2009, 2010 and 2011 and to fill all

vacancies that occur in bargaining unit classifications during those years. For 2009, the market adjustment for Maintenance Workers was 1.25% -- except that one classification with a few employees received an adjustment of 2.25%. Market adjustments for 2010 and 2011 have not been determined, but it appears that they also will be determined using the historical market adjustment formula.

For 2009, non-union employees received a general increase of 2.75% and a market adjustment that averaged 1.48% across all classifications. For 2010, non-union employees will receive a 1% general increase, and it appears that they will receive a market adjustment, if any is indicated by use of the historical market adjustment formula.

The Employer argues that, even though all other employees of the City, union and non-union, received a 2.75% general increase for 2009, for Dispatchers the general increase for 2009 should be 1%. It argues that, when it determined the general increase for non-union employees and negotiated the general increase for other union employees, the condition of the national, state and local economy was substantially better. Indeed, the Employer has presented substantial and clearly credible evidence that a severe recession has affected the finances of the State of Minnesota and the City itself. The Employer urges, therefore, that it is justified in providing Dispatchers with a lower general increase for 2009 than what its other employees received.

The Union argues that, notwithstanding the harsh economic conditions, internal consistency should require that Dispatchers

receive the same general increase of 2.75% that other City employees received for 2009. The Union presented substantial evidence indicating that, despite the economic recession, the Employer can afford to pay what it calculates the cost of its position to be -- about \$20,000.

Award.

I make the following award, resolving the issues of Contract Duration and Compensation, for the following reasons. First, I award a contract duration of two years, 2009 and 2010, though the exact term should be adapted to the Employer's budget year, beginning on December 26, 2008, and ending on December 23, 2010. Second, for 2009, I award a general increase of 2.75%, and for 2010, a general increase of 1%. Third, for both years of the contract, I award language similar to the historical market adjustment formula -- retaining its weighted-mean calculation, but using five cities in the comparison base -- Bloomington, Eden Prairie, Edina, Richfield and St. Louis Park. Thus, the contract language covering the market adjustment shall be the following:

For 2009, the market adjustment will be determined using the 2008 League of Minnesota Cities Metro Area Salary Survey. The comparison cities will be Bloomington, Eden Prairie, Edina, Richfield and St. Louis Park.

Minnetonka's 2008 maximum wage rate for public safety dispatchers as listed in the 2008 survey will be compared to the 2008 weighted mean for public safety dispatchers for the above-noted comparison cities. If Minnetonka's maximum wage rate is above the weighted mean, no market adjustment will be made in 2009. If Minnetonka's maximum wage rate is below the weighted mean, the public safety dispatchers' maximum wage rate will be adjusted by the percentage difference between Minnetonka's maximum wage

rate and the weighted mean of the comparison group. Each remaining wage step will be adjusted accordingly.

For 2010, the market adjustment will be determined using the 2009 League of Minnesota Cities Metro Area Salary Survey. The comparison cities will be Bloomington, Eden Prairie, Edina, Richfield and St. Louis Park.

Minnetonka's 2009 maximum wage rate for public safety dispatchers as determined in the award of September 2, 2009, in the "interests" arbitration proceeding between the parties will be compared to the 2009 weighted mean for public safety dispatchers for the above-noted comparison cities. If Minnetonka's maximum wage rate is above the weighted mean, no market adjustment will be made in 2010. If Minnetonka's maximum wage rate is below the weighted mean, the public safety dispatchers' maximum wage rate will be adjusted by the percentage difference between Minnetonka's maximum wage rate and the weighted mean of the comparison group. Each remaining wage step will be adjusted accordingly.

This award is driven almost entirely by arguments for internal consistency. The Union would use internal consistency to justify a 2.75% general increase for 2009 -- the same increase received by all of the other 230 employees of the Employer. The Employer would use internal consistency to justify continuation of the weighted-mean comparison in the historical market adjustment formula, which also applies to all of the other 230 employees of the Employer. I agree with the Union that these eight employees should have the same general increase that all other employees have received for 2009, notwithstanding the slight effect such uniformity of treatment will have on the finances of the Employer. I agree with the Employer that there is no financial justification for abandoning the weighted-mean comparison that has long been and still is being used to determine market adjustments for all employees. As to the selection of cities in the comparison base, I have selected five of the six cities that the Employer now

proposes and that the parties once agreed to use temporarily. Use of five cities rather than three, as the Union has proposed, will give the comparison greater breadth. I have deleted Hopkins, notwithstanding its adjacency to Minnetonka, not only because it has a far smaller population than the five cities selected, but primarily because the average wage rate it pays to Dispatchers is disproportionately low compared to the five cities selected. It appears that the low average wage rate for Hopkins is caused by a salary schedule that moves a Dispatcher toward the top wage rate at a slower pace, thus including more lower paid employees in the average for Hopkins. The following table extracted from the parties' evidence shows the "Actual Average" annual salary as determined by the League of Minnesota Cities Salary Survey for 2008:

| <u>City</u> | <u>Population</u> | <u>Actual Average Annual Salary</u> |
|----------------|-------------------|-------------------------------------|
| Bloomington | 85,832 | \$48,909 |
| Eden Prairie | 61,325 | 52,146 |
| Edina | 46,896 | 54,038 |
| Hopkins | 17,389 | 44,299 |
| Richfield | 33,099 | 51,418 |
| St. Louis Park | 44,569 | 51,759 |

ISSUE 4: SEVERANCE

Article XXI of the current labor agreement, which is entitled, "Severance Pay," is set out below:

- 21.1. On the date of termination, employees who leave the City in good standing and who have 10 years of continuous service are eligible for severance pay under the following conditions:

[I omit the four stated causes of termination needed to qualify for severance pay.]

21.2. Employees shall be entitled to severance pay equal to the greater of:

1. Four weeks of appropriate pay plus one additional week of appropriate pay for each year of service beyond 10 years, not to exceed a total of 13 weeks appropriate pay, or
2. One-third of the employee's accumulated sick leave at the appropriate pay rate.

For both options, the appropriate pay shall be determined by dividing the employee's number of scheduled hours during the years used to qualify for severance pay by the number of full-time hours for the same period. The resulting percentage shall be applied to the full-time wage rate for the employee's position at termination to achieve the amount of appropriate pay.

For example, an employee who worked 8 years with 30 scheduled hours per week and 2 years with 40 scheduled hours per week would be entitled to 80% of full-time pay: $(8 \times 30 + 2 \times 40)$ divided by 400 = 80%. An employee who worked full-time for the entire qualifying period would be entitled to 100% of full-time pay.

The Union's Position.

The Union proposes that the following new language be added to Article XXI of the new labor agreement:

Upon separation of employment from the City, the employee's severance shall be placed into the employee's Post Employment Health Care Savings Account.

21.3. Employees eligible for severance pay in accordance with the City's Personnel Policy who submit a written notice of separation from City employment at least three months prior to that separation and who do not revoke it will receive the amount of severance pay pursuant to the policy plus an additional ten percent of that account.

The Employer's Position.

The Employer's final position as first proposed was to "retain current language." At the hearing, the Employer amended its position, seeking to add the following language as Section 21.3, rather than the language proposed by the Union:

21.3. Employees who qualify to receive severance pay upon retiring from the City, as defined by the Personnel Policy, must place 100% of their severance pay in their individual Retiree Health Savings Plan accounts at the time of retirement. (The Union may determine an alternate percentage of employees' severance pay to be placed in the accounts.)

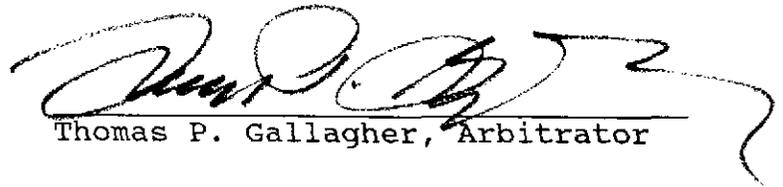
Decision and Award.

The Employer's Personnel Policy establishes a severance pay program that covers all City employees, union and non-union. The parties' arguments indicate that the parts of their proposals that appear to be substantive would not make the severance pay program different from what the Personnel Policy now provides. Thus, the Union's proposal to have severance pay deposited into "the employee's Post Employment Health Care Savings Account" is substantively the same as the Employer's proposal that the amount be deposited in the employee's "individual Retiree Health Savings Plan." The arguments of the parties also indicate that the Union's proposal that the amount deposited is to be the amount in the account "plus an additional ten percent of that account" would make no change from what the Personnel Policy now provides.

The Union makes its proposal, not to make changes in the program, but to place a contract limitation on the Employer's ability to change it through amendment of the Personnel Policy. The Employer opposes the Union's proposal because it wants to retain its ability to keep a uniform severance pay program for all employees, which, the Employer argues, would be lost, if provisions of labor agreements covering the four bargaining units of union employees place limits on its flexibility.

I am persuaded by the Employer's argument that its severance pay program should be the same for all employees, and that, therefore, contract language should not limit its ability to retain that uniformity. Accordingly, I award the language proposed by the Employer, which continues the Employer's authority to establish the terms of the severance pay program through the Personnel Policy.

September 2, 2009



Thomas P. Gallagher, Arbitrator