

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION
)
 between)
)
 City of West St. Paul,)
 Minnesota) BMS Case No. 09-PN-1062
 -and-)
)
 Law Enforcement Labor Services,)
 Inc., Local No. 72 (Police)
 Officer Unit) January 19, 2010
))

APPEARANCES

For City of West St. Paul, Minnesota

Frank J. Madden, Attorney, Frank Madden & Associates, Plymouth,
 Minnesota
 Sandy Christensen, Finance Director
 Sherrie Le, Assistant City Manager
 Manila (Bud) Shaver, Police Chief
 John Remkus, City Manager

For Law Enforcement Labor Services, Inc., Local No. 72

Brooke Bass, Attorney
 Adam Burnside, Business Agent
 Philip Windschitt, Steward
 Jose Marrero, Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 72
 (hereinafter referred to as the "Union") is the certified
 bargaining representative for 23 non-supervisory essential
 licensed Police Officers employed by the City of West St. Paul,
 Minnesota (hereinafter referred to as the "City" or "Employer")
 as defined by Minn. Stat. §179A.03, subd. 8 (2009).

RECEIVED BMS-

The City and Union (hereinafter referred to as the "Parties") are signatories to an expired contract that was effective January 1, 2007, and remained in full force and effect until December 31, 2008.

The Parties entered into negotiations for a successor collective bargaining agreement. The Parties were unable to during bargaining and mediation to resolve some of their outstanding issues. As a result, on August 9, 2009, the Bureau of Mediation Services (BMS) received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On August 11, 2009, 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. Holidays - Premium Pay for Christmas Eve - Article 23
2. Wages 2009 - Wage Rate for 2009 - Appendix A
3. Wages 2010 - Wage Rate for 2010, if Awarded - Appendix A
4. Duration - 1 Year or 2 Year Contract - Article 24

The Parties selected Richard J. Miller to be the sole Arbitrator from an arbitration panel submitted by the BMS. A hearing in the matter convened on December 8, 2009, at 9:00 a.m. at City Hall, 1616 Humboldt Avenue, West St. Paul, Minnesota.

The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions.

Pursuant to the statute and agreement by the Parties, the record was closed on December 21, 2009, and post hearing briefs were due on January 4, 2010. The post hearing briefs were timely submitted by the Parties and received by the Arbitrator via e-mail on that date. The Arbitrator then exchanged the briefs via e-mail, after which the record was considered closed.

Both Parties submitted final positions for a two year agreement effective January 1, 2009, to December 31, 2010, leaving three issues for determination by the Arbitrator.

ISSUE ONE: HOLIDAYS - PREMIUM PAY FOR CHRISTMAS EVE - ARTICLE 23

POSITION OF THE PARTIES

The Union's position is to add Christmas Eve to the list of holidays such that the Police Officers will earn time and one-half pay for all hours worked on Christmas Eve.

The Employer's position is to retain the current contract language found in Article XXIII, Holidays, as follows:

The EMPLOYER shall grant 96 hours of paid holidays to the employees. Employees required to work on a holiday, as listed below, shall be paid time and one-half for all hours worked on the named holiday.

New Years Day	January 1
Martin Luther King Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November

Friday after Thanksgiving
Christmas Day

Day after Thanksgiving
December 25

In addition to the above, one-half (1/2) day on Christmas Eve day and one-half (1/2) day on New Years Eve day and one floating holiday.

AWARD

The Union's position is sustained.

RATIONALE

It is generally agreed by interest arbitrators that internal equity is a paramount consideration with regard to benefits provided to all or most employees within the jurisdiction of the employer.

All City employee are compensated at a rate of time and one-half for all hours worked on Christmas Eve. The City's Personnel Policy provides this benefit. The Policy states: "An employee, except exempt employees or those employees covered under a bargaining unit contract, scheduled on a holiday shall be compensated in a cash payment which will be calculated at a rate of one and one-half times (1 1/2) times the employee's regular rate of pay and be given floating time off equal to the straight time worked on the designated holiday." (Employer Exhibit #82, Section 7.1(3)).

Contrary to the Employer's position, the Union is not proposing to increase holiday premium pay to 100 hours. The

Union is proposing to earn the rate of time and one-half for all hours worked on Christmas Eve. The compensation would only be earned if the Police Officer was scheduled and worked on Christmas Eve. Each member of the Bargaining Unit would still receive 96 hours of holiday pay akin to all other City employees. The 96 hours of holiday pay is the pay earned regardless of time worked on a holiday.

The Union's position is merely requesting a benefit that all non-union City employees enjoy. The City is not distinguishing between two separate holiday pay benefits. The benefit of receiving holiday pay is not the same as the wage rate received for hours worked on a holiday. Clearly, internal equity supports the Union's position.

In addition, external comparison supports the Union's position. There are at least one-half of the cities contained in the five above/five below Stanton VI comparability group and also at least one-half of the cities contained in the combined Stanton 5 and 6 group that provide for premium pay for all hours worked on Christmas Eve. (Union Exhibit #15).

Clearly, the evidence establishes that the Union's position should be awarded allowing for premium pay for all hours worked on Christmas Eve. The Union's position is fair and reasonable in light of both internal and external comparability.

ISSUES TWO AND THREE: WAGE RATES FOR 2009 AND 2010

POSITION OF THE PARTIES

The Union's position is a 4.0% general wage increase plus step movement each year of the contract. The City's position is a 0% general wage increase for 2009 and 2010, step movement for 2009 only and no step movement or service credit for 2010.

AWARD

A 3% general wage increase for 2009 with step movement. A 0% general wage increase with step movement for 2010.

RATIONALE

The general trend among active Minnesota interest arbitrators is to base their interest arbitration decisions on four highly recognized considerations: the employer's ability to pay; internal equity; external or market comparisons; and other economic factors (e.g., Consumer Price Index, turnover, retention rates, etc.).

When economic times were good, arbitrators would spent some time in addressing the financial ability of the employer to fund the union's economic demands and/or to fund the arbitrator's awards. The reason for a passive review of the financial condition of the employer was because the employer always had the financial ability to pay for the economic demands made by the union without hardship, and the only real dispute was over how

that money should be spent or not spent. In other words, the main argument between the parties in good economic times was the financial constraint to be taken by arbitrators in rendering their economic awards.

Unfortunately, for many of us the "good" economic times are no longer upon us. Minnesota's economic climate and the adverse effect that it is having on public employers in the state are real and not contrived. As a result, arbitrators can no longer simply give passive review to the employer's financial condition, but must now give it full and undivided attention. In fact, PELRA requires arbitrators in interest arbitration proceedings to consider the "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. §179A.16, subd. 7 (2009). Not since the early 1980s has the employer's ability to pay become such an important consideration in interest arbitration. In fact, it is the paramount consideration now and probably will be for many years to come until we rid ourselves of this recession and get Americans back in the work force.

Most certainly, if an employer can prove that they have limited, diminishing, or lack of revenues to pay expenditures, the other three factors normally considered in arbitration

(internal and external comparability and other economic considerations) have limited or no standing in the decision-making process as to disputed economic items.

It is undisputed that the State's financial condition directly affects local units of government such as West St. Paul. The Minnesota Department of Finance announced on December 2, 2009, that the State's deficit for 2010-2011 will be \$1.203 billion and during that same time period, revenues are forecast to fall by \$1.156 billion below earlier estimates. Based on current spending, on-going expenditures will exceed revenues by an additional \$995 million, leaving a total shortfall of \$5.426 billion deficit without adjustment for inflation. (Employer Exhibits #7, 9, 9A).

During the hearing, it was alleged by the City that due to the State's shortfall Governor Pawlenty may cut the December 2009 Local Government Aid ("LGA") and Homestead and Agricultural Credit Aid ("HACA") payments to local units of government, including West St. Paul. A good portion of the City's argument was based on the premise that this State aid would be cut. Fortunately, Governor Pawlenty did not unilaterally cut the December 2009 LGA and HACA payments to local units of government, which places the City in a better financial condition than had the cuts been made to the City.

The City is highly dependent upon State aid to balance its budget. In 2003, the City lost \$532,065 in State aid payments, which resulted in mid-year budget reductions to offset this loss. The City experienced a \$400,000 unallotment in December 2008. This unallotment caused the City to use fund balance monies to pay for wage increases in 2008 to City employees. The City lost an additional \$340,192 in LGA through the 2009 unallotment process. This funding reduction required a corresponding spending reduction of a wage freeze for all employees, holding four full-time vacant positions open, and filling one full-time position with a temporary part-time employee.

West St. Paul is relying on over \$773,960 in State aid to balance its budget for 2010. Personnel costs comprise 74% of the City's total General Fund budget for 2010. The 2010 budget is balanced with and predicated on no general wage increases and no step movement. There is no reserve set aside to pay for wage increases in 2010. (Employer Exhibit #13).

The City's 2010 Proposed Budget required a 9.5% property tax increase to maintain existing service levies, including no wage adjustments for either 2009 or 2010. This was the highest tax increase in Dakota County. (Employer Exhibit #42). This budget reflected an overall spending reduction of 1.2% or \$127,000 in General Fund. Capital spending decreased by 13.4%. (Employer

Exhibit #32). As a result of citizen complaints and after subsequent budget discussions, the City Council lowered the levy increase to 5.9%. This was a political decision. Had the City Council levied at its limit it would have meant more revenue to offset expenditure, planned or unplanned. In any event, lowering the levy required the City to make some cutbacks in planned training, holding vacant positions open, and reduce equipment replacement. At this level, the City alleges that there is not money available to pay for general wage increases in either 2009 or 2010.

The undesignated cash reserves of the City as of December 31 of 2009 and 2010 are an important consideration. The State Auditor recommends that cities adopt fund balance policies and that the amount of unreserved fund balance in the general and special revenue funds as of December 31 be approximately 35 to 50 percent of fund operating revenues, or no less than five months of operating expenditures. The City has adopted a policy of maintaining 54.5% of one year's General Fund expenditures in its general fund balance. This is far greater than the minimum of 35 percent recommended by the State Auditor.

The Union asserts that its proposed wage increase of 4.0% will cost the City only \$56,465 in additional monies for 2009 and an additional \$58,369 in 2010, for a total of \$114,834. (Union

Exhibit #4). The Union's estimated cost ignores the automatic roll-up costs to the City of any wage increase, including payroll taxes, PERA contributions in the amount of 14.1% in 2009, FICA, and overtime.

The City is fearful of the domino effect of awarding a wage increase to the LELS Police Officers that will then require all City employees to receive the same increase based on the long-standing practice of consistency across all employee groups for general wage adjustments.

The City's costing of the impact of any City-wide wage adjustments shows that based on a 0% general wage increase in 2009 and a 0% general wage increase in 2010, the cost of step movement will be an additional \$57,361. Over two years, taking into consideration FICA, PERA and step movement, a 1% general wage increase in 2009 and a 1.0% general wage increase in 2010 for all employees will cost an additional \$157,567. (Employer Exhibit #50A). According to the City, there is no cushion in the budget to pay for wage increases of any amount, even a minimal increase.

Each percent wage adjustment for 2009 has a cost to the City of over \$60,000 when factoring in payroll taxes and other benefits. A 2009 general wage increase would cause a reduction in the City's fund balance, which provides the basis for the

City's investment portfolio and therefore, the amount of interest income that the City can expect to receive. The City would be looking at both an increase in expenditures and a loss in revenue. The City claims that it does not have funding available for 2010 to maintain adjustments made to the 2009 wage rates or for a general wage increase in 2010.

West St. Paul is a first-ring suburb of the Twin Cities with a population of approximately 19,000. The City employs approximately 74 employees. The City operates a Police Department with approximately 28 employees, of which 23 are in the classification of Police Officer represented by the Union. The Union is also the exclusive representative of five police Sergeants in another bargaining unit. Teamsters Local 320 represents 15 maintenance employees. The remaining 31 City employees are non-union.

As noted previously, there has been a long history in West St. Paul of consistent settlements among all bargaining units and non-union employees. However, since none of the three bargaining units have settled for 2009 or 2010, there is no internal settlement trend that would have significance in this case. The fact that the City gave non-union employees a 0% general wage increase and no merit pay for 2008 or 2009 has been noted, but is not persuasive. Non-union employees do not have the right to

collective bargain for anything and are simply given whatever is deemed appropriate by the Employer. In this case, it was a 0% general wage increase. Thus, little weight can be accorded to this arrangement compared to a collective bargained contract, which must be negotiated, agreed upon by the parties, or arbitrated.

City employees who are members of a bargaining unit and eligible for step movement have already received their step increases in 2009. This resulted in wage increases for 12 of the 23 LELS Police Officers. For example, six Police Officers received step increases up to 11.1% and two Officers received step increases in the amount of 12.5% and 14.3%. Step increases for the LELS Police Officers unit as of November 2009 cost \$36,916. (Employer Exhibit #55).

The Union's argument regarding internal factors relates to pay equity. The evidence establishes that the City is in compliance with the Local Government Pay Equity Act ("Pay Equity Act"). (Union Exhibit #11). The record is inconclusive as to whether the Union's position (4% each year) would still be in compliance with the Pay Equity Act. However, the Arbitrator's wage awards are far less than what was sought by the Union.

The City proposes a comparability group consisting of ten cities in the former DCA Stanton Group VI, including those five

cities which are greater in population than West St. Paul and the five cities which are less in population than West St. Paul.

(Employer Exhibit #60). The Union, on the other hand, alleges that West St. Paul should be considered as a Stanton 5 and/or Stanton 6 for external comparison purposes.

There have been three interest arbitration decisions in 1979, 1983, and 1992 sustaining the use of Stanton 5 cities. (Union Exhibits #16-18). There was one interest arbitration decision in 1998 that mentions Stanton 6 cities. (Union Exhibit #19). In any event, all of the comparability groups suggested by the Parties have merit. The Union's proposed group provides a broader range of cities, while the City's proposed comparability group more closely aligns West St. Paul with similar cities that are closer in population to West St. Paul.

The Stanton 5 wage settlement average for 2009 is 3.78%. The Stanton 5 wage average for 2010 is about 3.4%. The Stanton 6 wage average for 2009 is 3.59%. The Stanton 6 market average for 2010 is 3.37%. (Union Exhibit #13). The Employer's proposed comparability group yields an approximately wage increase of 3.17% for 2009 and 3.5% for 2010. (Employer Exhibit #63).

There are several important points to be made concerning this data. First, the Employer did not bring forward evidence of any wage freeze settlements in Stanton 5 or Stanton 6 cities for

2009 or 2010, specifically with regards to a zero percent increase in COLA (general) and a zero step movement (step freeze). Second, the external comparison data demonstrates that most of the settlements in the Employer's proposed comparability group for 2009 were completed prior to the Governor's unallotment of state aid in December 2008, were the result of a second or third year of a two or three year contract, or a settlement governed by a pre-existing uniform internal settlement pattern. (Employer Exhibit #64). Third, a majority of 2009 metro area collective bargaining agreements were not ratified until after the December 2008 unallotment. Fourth, the Union was not able to provide one example of a 2010 settlement for a wage increase that occurred after the December 2008 unallotment, which was not the second or third year of a two or three year contract or a settlement governed by a pre-existing uniform internal settlement pattern. The data demonstrates that the vast majority of cities in the Employer's comparison group are proposing 0% for 2010. (Employer Exhibit #65). Some cities and counties are settling at 0%, although there are few law enforcement settlements at this juncture. Finally, there have been significant changes in the economy and State aid received by local units of government since these settlements were reached that have far-reaching financial impact on employers, including West St. Paul.

There has been much said about the precedential value of interest arbitration decisions, especially as they relate to a market study (external comparison). When economic times were good and every employer had sufficient funds to pay for salary increases demanded by their employees, a market study was important. Thus, a comparison of wage settlements among comparable employers was valid because each and every employer was on the same, even playing field (i.e., had the ability to pay for the economic demands made by their employees without financial hardship). This same, even playing field no longer exists. Thus, little, if no, precedential value by other arbitrators or parties should be given in this case. This is because the Arbitrator's decision was decided by the unique financial condition found in West St. Paul and not by what is being paid to other comparable cities.

Not all cities may be in the same or similar economic condition as West St. Paul. Some may be better, some may be worse. Most certainly, if a city is in better financial condition than West St. Paul, one would expect that city to better compensate their employees than the Arbitrator's award in this case. This same logic would hold true if the financial situation of a city is worst than West St. Paul. In that case, one would expect to see a wage freeze with no step movement.

Once again, due to the funding (or lack of) available to cities, no two cities are the same and maybe not even similar. Thus, each and every arbitration case must be decided on its own merits as to the employer's ability to pay for the demands being made by their employees.

In the final analysis, based mainly on the City's financial condition and partially on the other factors usually considered in interest arbitration (except "other economic considerations" were not readily mentioned), the Arbitrator's wage award is not only fair and reasonable to the Parties, but is mandated by the evidence.

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 19, 2010, at Maple Grove, Minnesota.