

IN THE MATTER OF ARBITRATION BETWEEN

**Law Enforcement Labor Services, Inc.
Local #328**

and

**Centennial Lakes Police Department,
Circle Pines, Minnesota**

OPINION AND AWARD

**CONTRACT/IMPASSE
ARBITRATION**

BMS Case No. 09-PN-0840

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of LELS
Nick Wetschka, Business Agent
St. Paul, Minnesota

On behalf of Centennial Lakes, Minnesota, Police Department
Paul M. Floyd, Esq.
Wallen-Friedman and Floyd, P.A.
Minneapolis, Minnesota

JURISDICTION

In accordance with the Public Employment Labor Relations Act of Minnesota, Minn. Stat. §179A.01, et. seq. (2009); and under the jurisdiction of the State of Minnesota, Bureau of Mediation Services, the above Contract/Impasse Arbitration was submitted to Joseph L. Daly, Arbitrator, on February 4, 2010, at the Lexington, MN, City Hall. Post-Hearing Briefs were sent by Centennial Lakes on March 3, 2010, and by LELS on March 5, 2010. The decision was rendered by the Arbitrator on March 31, 2010.

ISSUES AT IMPASSE

The following unresolved issues were certified for interest arbitration.

1. Appendix A – Wages – 2009
2. Appendix A – Wages – 2010

3. Article 17 – Insurance – 2009 Employer Contribution
4. Article 17 – Insurance – 2010 Employer Contribution
5. Article 22 (Appendix B) – Performance Pay Plan
6. Article 25 – Duration – Settled by the parties at the arbitration hearing

FINAL POSITIONS OF THE PARTIES

LELS Final Position

1. **2009 Wages Appendix A:** Effective January 1, 2009 the wage for Patrol Sergeant shall be ~~115%~~**116%** of top patrol wage and the wage for Administrative Sergeant shall be ~~120%~~**121%** of top patrol wage.
2. **2010 Wages Appendix A:** Effective January 1, 2010 the wage for Patrol Sergeant shall be **117%** of top patrol wage and the wage for Administrative Sergeant shall be **122%** of top patrol wage.
3. **Article 17 – Insurance – 2009 Employer Contributions:** Effective January 1, 2009, the Employer will contribute up to a maximum of nine hundred dollars **\$900** per month, per employee, for health insurance including dependent coverage.
4. **Article 17 – Insurance – 2010 Employer Contribution:** Effective January 1, 2010, the employer will contribute up to a maximum of one thousand dollars **\$1,000** per month, per employee, for health insurance including dependant coverage.
5. **Article 22 (Appendix B) – Performance Pay Plan:** C. Each element of the Performance Pay Program shall have a monetary value of ~~\$400~~ as indicated. The maximum annual amount available is ~~\$1,200~~**\$1,500**.

COMMUNITY INVOLVEMENT/SERVICE:

This is an optional element of the Performance Pay Program. Eligible officers who actively involved in outside of the job community service activity may receive \$400 in additional compensation. **If all hours of this element are performed in one or more of three Centennial Lakes cities, the this element shall have a value of \$500.**

PHYSICAL FITNESS:

This is an optional element of the performance pay program and is worth ~~\$400.00~~ **\$500**.

CLPD Final Position

- 1. 2009 Wages Appendix A:** A **3.5%** increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2009.
- 2. 2010 Wages Appendix A:** A **0%** increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2010.
- 3. Article 17 – Insurance—2009 & 2010 Employer Contributions:** No increase.

ARTICLE 17 – INSURANCE 17.1 Effective January 1, 2009 the EMPLOYER will contribute up to a maximum of eight hundred dollars (**\$800**) per month, per employee, for health insurance, including dependent coverage. Effective January 1, 2010 the EMPLOYER will contribute up to a maximum of eight hundred dollars (**\$800**), per month, per employee for health insurance, including dependent coverage.

- 5. Article 22 (Appendix B) – Performance Pay Plan:** No change for 2009-2010. Each element of the Performance Pay Plan shall have a monetary value of **\$400.00** and the maximum annual amount is **\$1,200**.

ARTICLE 22—PERFORMANCE PAY PLAN

The EMPLOYER shall continue the performance pay plan (Plan), the details of the Plan are contained in APPENDIX B (attached hereto), effective January 1, 2009 through December 31, 2010.

AWARD, DECISION AND RATIONALE

ISSUE #1 - WAGES 2009

Union’s Final Position:

Effective January 1, 2009 the wage for Patrol Sergeant shall be ~~115%~~**116%** of top patrol wage and the wage for Administrative Sergeant shall be ~~120%~~**121%** of top patrol wage.

Employer’s Final Position:

A **3.5%** increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2009.

AWARD AND RATIONALE

The position of the Centennial Lakes Police Department is awarded.

Centennial Lakes Police Department is funded by three separate cities—Lexington, Centerville, and Circle Pines.

The Union is seeking an increase of 1% over the current contract language effective January 1 of each year, which would sent the Patrol Sergeant's wage at 116% of top patrol for 2009 and 117% of top patrol for 2010; and the Administrative Sergeant's wage at 121% of top patrol for 2009 and 122% of top patrol for 2010. The Employer's position is to grant a 3.5% increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2009 and a 0% increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2010.

The Union contends the external market, internal equity, and the employer's ability to pay all favor the requested wage increases in 2009 and 2010. The Union cites the 2008 Centennial Lakes Police Department Comprehensive Annual Financial Report as proof that the Employer has the ability to pay. In 2007, the Employer's net assets increased by \$128,486 and in 2008, the Employer's net assets increased by \$55,779. The reserved and undesignated amount of the General Fund was \$419,767 in 2007 and increased to \$514,383 in 2008. The Police Department also has cash and investments of \$698,788, which could be used to cover any shortfall for the projected budget and the Union's position.

Centennial Lakes Police Department responds to this by highlighting that the current economic times are difficult. Given the adverse effect of Minnesota's distress economic climate and its negative impact on State Funding and property taxes, Centennial Lakes Police Department and the respective funding cities must fulfill their statutory obligations to "efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. §179A.16, subd. 7 (2009).

The three funding cities have taken into account their budget realities, their own financial obligations in this difficult financial time, and their current union and non-union contractual obligations and concessions in justifying its final position of a 3.5% hourly wage increase in the hourly wage for Administrative Sergeant and Patrol Sergeant for January 1, 2009 and a 0% for January 1, 2010. The Centennial Lakes Police Department contends there has been an extreme impact in what has become known as the "Great Recession" upon the State of

Minnesota and its local government entities. The severity and continuation of the recession in Minnesota does not bode well for the employer's upcoming economic ability to pay. For example, Arbitrator Richard John Miller said in a recent case "[T]he Minnesota Department of Finance announced on December 2, 2009, that the state's deficit for 2010-2011 will be \$1.203 billion during that same period of time, revenues are forecast to fall by \$1.156 billion below earlier estimates. Based upon current spending, on-going expenditures will exceed revenues by an additional \$995 million, leaving a total shortfall of \$5.46 billion deficit without adjustment for inflation." See **City of West St. Paul** BMS Case # 09-PN-106 (Miller, 1/19/10). The CLPD argues "The most recent news articles emphasize that Governor Pawlenty intends to balance the State's epic budget crisis on the backs of local government as he did in the last biennium." Post-hearing Brief of Centennial Lakes Police Department at 5.

In this case, each of the three cities that fund the Centennial Lakes Police Department had received a substantial portion of their budgets from either state aid funding (i.e., Local Government Aid or Market Value Homestead Credit) or local property tax. Lexington's LGA was cut by \$43,934 in 2009 and \$104,971 in 2010. Centerville's unallotment of \$69,000 in 2010 and Market Value Homestead Credit cut to 0 in 2009 and 2010. Circle Pines' Market Value Homestead Credit and Local Government Aid was 0 in 2008, a reduction of \$38,422 in 2009 and another reduction of \$175,630 plus an additional \$27,244 in proposed cuts to LGA in 2010. The Centennial Lakes Police Department urges the arbitrator to understand that all of these avenues of revenue generation are being reduced at the same time with a direct and lasting impact on each of the cities. Further, each city's financial plate is also impacted by low income and property wealth, high unemployment and stagnant wages, resulting in its inability to raise residential property taxes to cover the budget cuts and shortfalls. The Centennial Lakes Police Department argues that a "[government entity's] deteriorating ability to pay should be a factor in assigning weight to the other criteria used in evaluating the parties' positions on the issues at impasse." See **LELS Local #31**, BMS Case # 09-PN-0540 (McGilligan 8/18/09) quoting the **Metropolitan Council and Law Enforcement Labor Services, Inc.**, BMS Case # 08-PN-1141 at page 11 (Bognanno 2/27/09).

The Union contends that the market group for external comparisons should be Stanton Group 6. This, the Union argues, is supported by the combined population of the three cities the police department serves. The Centennial Lakes Police Department contends otherwise. It

argues that the three cities are small cities and not a city of 11,000-25,000 residents to be included in the Stanton Group 6. Because the state does not combine the three cities populations for state aid purposes – but considers each one separately – combining the cities into one for purposes of external comparisons and saying Stanton Group 6 should be the comparator is simply not proper. The Centennial Lakes Police Department contends that “this case hinges on the Employer’s ability to pay.” Post-hearing Brief of Union at 13. As a consequence it is not even necessary for the arbitrator to compare wages of other cities. Since this is the first interest arbitration of the parties, Centennial Lakes Police Department urges the arbitrator not to make such comparisons and especially not to use the Stanton Group 6 as a comparable.

At the arbitration hearing, the Centennial Lakes Police Department produced evidence that it was now out of compliance with pay equity at the end of the year 2009. The significance of this fact is that the CLPD will need to come in compliance in 2010 and to do so the CLPD will likely need to raise the salaries of various CLPD female employees. The Union counters that even if the employer is not in compliance with pay equity, the pay equity argument is moot since neither the employer’s position nor the Union’s position will put them back in or further out of compliance.

The Centennial Lakes Police Department argument is compelling. The current economic times are vastly different from the last time the contract was negotiated. The Union proposes increases in each category – wages, insurance and performance pay. But Minnesota is in a distressed economic climate. There is negative impact on state funding aid and property taxes for all three cities. These are hard economic times. While all three cities at present may have some unreserved and undesignated funds in their general funds, considering the likely upcoming LGA cuts and the continuing difficult economic times, the Centennial Lakes Police Department’s final position of a 3.5% increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2009 and the 0% increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2010 is fair and equitable.

Because this decision is based on the present and upcoming ability to pay, it is not necessary to consider internal equity, external or market comparisons, or other economic factors such as consumer price index, turn over, and retention rates.

ISSUE #2 - WAGES 2010

Union's final position:

Effective January 1, 2010 the wage for Patrol Sergeant shall be **117%** of top patrol wage and the wage for Administrative Sergeant shall be **122%** of top patrol wage.

Employer's Position:

A **0%** increase in the hourly wage for Administrative Sergeant and Patrol Sergeant effective January 1, 2010.

AWARD AND RATIONALE

The position of the Centennial Lakes Police Department is awarded.
See "Award and Rationale" under Issue #1 above.

ISSUE #3 – INSURANCE - 2009

Union's Final Position:

Effective January 1, 2009, the Employer will contribute up to a maximum of nine hundred dollars **\$900** per month, per employee, for health insurance including dependent coverage.

Employer's Final Position:

Article 17 – Insurance—2009 & 2010 Employer Contributions: No increase.

ARTICLE 17 – INSURANCE 17.1 Effective January 1, 2009 the EMPLOYER will contribute up to a maximum of eight hundred dollars (**\$800**) per month, per employee, for health insurance, including dependent coverage. Effective January 1, 2010 the EMPLOYER will contribute up to a maximum of eight hundred dollars (**\$800**), per month, per employee for health insurance, including dependent coverage.

AWARD AND RATIONALE

There are three other Unions which have Collective Bargaining Agreements with the three cities that fund the Centennial Lakes Police Department. Circle Pines has a three year

Collective Bargaining Agreement with Local #49 (Maintenance Workers) which contributes \$825 in 2009 and \$850 in 2010. Centerville has a three-year Collective Bargaining Agreement with Local # 49 (Maintenance Workers) which contributes \$925 in 2009 and \$925 in 2010 towards insurance. Lexington has a three-year Collective Bargaining Agreement with AFSCME Local 2454 which contributes \$1000 in 2009 and \$1000 2010 towards insurance. “[M]ost arbitrators give heavy weight to evidence [of] employer’s internal structure of health insurance coverage/contributions as opposed to what external practices are in these areas...Hence, in the health area the comparison focus shifts from the external to the internal.” See **LELS and City of New Brighton**, BMS Case # 01-PN-674 (Kircher, 2002), citing **City of Farmington**, 85 LA 460, 464 (Bognanno, 1985). Taking into account the amounts contributed by Circle Pines, Centerville, and Lexington toward insurance, \$900 per month for 2009 and \$900 per month for 2010 more closely matches the average of the three other cities. \$900 for each year is fair, equitable, and more closely matches an attempt at internal comparability, recognizing that Circle Pines, Centerville, and Lexington are three independent and separate cities so that internal comparability cannot be perfectly matched.

ISSUE #4 – INSURANCE 2010

Union’s Final Position:

Article 17-Insurance-2010 Employer Contributions: Effective January 1, 2010, the Employer will contribute up to a maximum of one thousand dollars **\$1,000** per month, per employee, for health insurance including dependent coverage.

Employer’s Final Position:

Article 17 – Insurance—2009 & 2010 Employer Contributions: No increase.
ARTICLE 17 – INSURANCE 17.1 Effective January 1, 2009 the EMPLOYER will contribute up to a maximum of eight hundred dollars (**\$800**) per month, per employee, for health insurance, including dependent coverage. Effective January 1, 2010 the EMPLOYER will contribute up to a maximum of eight hundred dollars (**\$800**), per month, per employee for health insurance, including dependent coverage.

AWARD AND RATIONALE

The Employer shall contribute a maximum of \$900 per month per employee, for health insurance including dependant coverage. See rationale under Issue #3.

ISSUE #5 – PERFORMANCE PAY PLAN

Union’s Position:

Article 22 (Appendix B) – Performance Pay Plan: C. Each element of the Performance Pay Program shall have a monetary value of ~~\$400~~ as indicated. The maximum annual amount available is ~~\$1,200~~**\$1,500**.

COMMUNITY INVOLVEMENT/SERVICE:

This is an optional element of the Performance Pay Program. Eligible officers who actively involved in outside of the job community service activity may receive \$400 in additional compensation. **If all hours of this element are performed in one or more of three Centennial Lakes cities, the this element shall have a value of \$500.**

PHYSICAL FITNESS:

This is an optional element of the performance pay program and is worth ~~\$400.00~~ **\$500**.

Employer’s Position:

Article 22 (Appendix B) – Performance Pay Plan: No change for 2009-2010.

Each element of the Performance Pay Plan shall have a monetary value of **\$400.00** and the maximum annual amount is **\$1,200**.

ARTICLE 22—PERFORMANCE PAY PLAN

The EMPLOYER shall continue the performance pay plan (Plan), the details of the Plan are contained in APPENDIX B (attached hereto), effective January 1, 2009 through December 31, 2010.

AWARD AND RATIONALE

The position of the Union is awarded. With respect to “Performance Pay Plans”, internal comparability should be consistent among employees doing the same or similar work. The

Union's position is identical to the benefit presently provided to the police officers in their Collective Bargaining Agreement. Therefore the Union's position is awarded.

ISSUE #6 – CONTRACT DURATION

This matter was settled by the parties at the arbitration hearing. Therefore this issue has been withdrawn by agreement of the parties.

March 31, 2010

Dated

Joseph L. Daly, Arbitrator