BEFORE THE ARBITRATOR
CHARLES E. BOLDT

In the matter between:	:	
CITY OF BRAINERD,	:	
Public Employer,	:	
and	:	BMS CASE NO. 09PN0550
LAW ENFORCEMENT LABOR SERVICES, INC.,	:	
LOCAL NO. 65,	:	
Employee Organization.	:	

Appearances:
City of Brainerd – Thomas Fitzpatrick, City Attorney
Law Enforcement Labor Services – Nicholas Wetschka, Business Agent

AUTHORITY OF THE ARBITRATOR

On November 25, 2009, the Bureau of Mediation Services (BMS) certified to arbitration the dispute in negotiation between the City of Brainerd (City or Employer) and Law Enforcement Labor Services, Inc., Local No. 65 (LELS or Union). On January 22, 2010, BMS informed the undersigned of his selection from a list provided by BMS as the sole arbitrator for conventional arbitration between the parties. The issues for arbitration were: 1) Wages – Adjustment, If Any – Art. 9.1; 2) Duration – Length of Agreement – Art. 24.

A hearing was conducted on March 24, 2010 at the Brainerd City Hall. Both parties were accorded full opportunity to present testimony, evidence and argument in support of their respective positions. No issues of negotiability were raised. Both parties submitted post-hearing briefs postmarked by April 22, 2010. The final brief was received on April 26, 2010.

FINDINGS OF FACT

Brainerd is located in central Minnesota. It has a population between 13,000 and 14,000. The area is a tourist destination with a stretch of the Mississippi River and multiple lakes. The area's economy is seasonal, enhanced by the tourism industry.

At the end of 2008, the conclusion of the parties' last collective bargaining agreement, the City enjoyed a robust economy and a very sound financial position (Union Ex. pp. 31-32). The City had assets, which exceeded its liabilities by $38,774,538 (Union Ex. p. 35). The City had investments of idle funds totaling $12,225,452, including $8,983,083 in short term investments and $3,242,369 in long term investments (Union Ex. p.38). The City had a General Fund balance on December 31, 2008 of $2,446,485 (Union Ex. p.39).

The local economy, along with the State, national and global economies, began deteriorating rapidly in 2009. Unemployment reached 15.4% and by January 2010 had climbed to 19%, arguably the worst in the State.

The City is reliant on State aid for some funding of services. This is called Local Government Aid (LGA). The LGA for the City for 2009 was certified at and budgeted for $4,186,234. The State then ordered a recision of $269,942. In 2010, the certified LGA was reduced further to $3,637,854. The State again ordered a recision. In 2010, the amount was $270,000 (City Ex. p. 58 and City Brief).

Other economic indicators reflected a poor local economy for 2009. Mortgage foreclosures were 83 (City Ex. pp.54-57). Median household income was low (City Ex. p. 28). The percentage of the local families living below the poverty line was high (City Ex. p. 29).

The City responded to these economic setbacks with cuts to expenses and services. The police department, at issue here, was cut the deepest of all the City departments in 2009 (City Ex. pp. 60-62). The department had 20 full-time police officers in 2009 (City Ex. p. 72 and Union Ex. p. 169). In 2009, that number was reduced to 16.83 bargaining unit full-time equivalent positions, a 15.85% cut (City Ex. p. 22). The total cut in 2009 for the police department was $167,370 (City Ex. p 61).

In 2010, the City initiated additional cuts to the department amounting to $51,500 (City Ex. p. 64). These cuts were second deepest only to the street and sewer department, although if one removes the $91,000 cut from decreasing the overall number of streetlights, the police department again faces the deepest cuts (City Ex. p. 65).

During this period, the City was also bargaining for eight bargaining units within the City government. These bargaining units and their representatives are (City Ex. p. 70):

Unit	Representative
Police Supervisors	IBT #346
Street and Sewer	IUOE #49
Parks and Recreation	IUOE #49
Fire Equipment Operators	IAFF #4725
Public Utilities	IBEW #31
Administrative Support	IBEW #31
Administrators and Supervisors	Not Represented
Licensed Police Officers	**LELS**

All of the above-referenced units, except LELS, settled their negotiations for 2009 for a wage freeze. For 2010, two units have wage only reopeners: Police Supervisors and Fire Equipment Operators. Four other units have contingent wage reopeners for 2010 only if another unit receives an increase in 2010: Street and Sewer, Parks and Recreation, Public Utilities, and Administrators and Supervisors. Only Administrative Support agreed to a wage freeze unconditionally for 2010 (City Ex. p. 71).

The LELS represented bargaining unit has a bargaining history dating back to 1994. Every contract from 1994 through 2007 was a two-year agreement. Arbitration only occurred once during this period in 2002. In 2008, LELS arbitrated before arbitrator R. J. Miller (Miller) who awarded a one-year contract to bring all of the City's bargaining units in line to bargain at the same time for 2009. This is only the third interest arbitration for this unit (Union Ex. p. 3).

During 2008, the City received a "Notice of Pay Equity Compliance" (Union Ex. p. 78).

The Consumer Price Index for All Urban Consumers (CPI-U) in December 2009 for the twelve-month period preceding was 2.7% (Union Ex. p. 168).

The City and LELS are in agreement on the cities which constitute external comparability: Albert Lee, Bemidji, Cloquet, Elk River, Fairmont, Fergus Falls, Hibbing, Hutchinson, Marshall, New Ulm, North Mankato, Northfield, Red Wing and Willmar. Within this comparability group, only Marshall has not settled for either 2009 or 2010. Seven cities in the comparability group have settled for 2010: Albert Lee, Bemidji, Cloquet, Elk River, Fairmont, New Ulm, and North Mankato (Union Ex. pp. 114-115).

Settlements for 2009 and 2010 within the comparability group are:

City	2009 Raise	2010 Raise
Albert Lee	2%	0%
Bemidji	3%	¼%
Cloquet	2%	0%
Elk River	1 ½%	0%
Fairmont	3%	3%
Fergus Falls	3%	--
Hibbing	3%	--
Hutchinson	3%	--
Marshall	--	--
North Mankato	3%	3%
Northfield	3%	--
Red Wing	3 ½%	--
Willmar	3%	--
Average	**2.92%**	**1.25%**

LELS calculated that, with its requested 3% wage increase, its relative wage position would change from 3.62% below the average patrol wage in 2008 to 3.55% below the average in 2009 (Union Ex. p. 114). With the City's proposed wage freeze, its wage rate relative to the average would change from 3.62% below the average in 2008 to 6.67% below the average in 2009 (Union Ex. p. 115). These calculations were based on the top wage rate excluding longevity pay.

The City offered its market study demonstrating that it ranked third in starting wage among comparables in 2009 assuming a wage freeze (City Ex. p. 18). Making the same assumptions and continuing to eliminate Marshall, the City ranked eleventh among the

comparability group at the top wage rate without including longevity (City Ex. p. 19). If longevity is included, the City ranks eighth among comparables given a wage freeze (City Ex. p. 20). With the Union's requested 3% wage increase and including longevity, Brainerd would increase in rank at the top of the pay range to seventh position. Within the bargaining unit, two officers receive 2% longevity, two officers receive 3% longevity, four officers receive 5% longevity, and the remainder of the officers receive no longevity (Union Ex. p. 28).

ISSUES

Duration:

LELS Position – One year agreement January 1, 2009 through December 31, 2009.

City Position – This agreement shall be for three years, for 2009, 2010, and 2011. The City subsequently changed this position at hearing to recommend a two year agreement for 2009 and 2010 with a limited reopener for wages only for 2010.

Wages:

LELS Position – General Increase: Effective January 1, 2009, Steps 1 through 4 will be increased by three percent (3%) over 2008 amounts.

City Position – A wage freeze should be awarded for 2009 with a reopener for wages only for 2010 and 2011. (Amended at hearing as above).

ARGUMENTS AND DISCUSSION

ISSUE 1 – DURATION – ARTICLE 24

LELS Argument

LELS argued that Arbitrator Miller awarded a one-year duration agreement for 2008 because sufficient data was not available to grant an award for 2009. LELS maintained that the same number of settlements; and, thus, the same lack of information is extant for 2010.

LELS contended that longer contracts are sometimes used for a "cooling off" period. The Union averred that no adversarial relationship exists between the City and LELS so no such "cooling off" is needed.

LELS cited Miller's 2008 dicta about lack of data and argued that this should set precedent for the instant case since little has changed in the interim period.

LELS maintained that if it considered a multiyear agreement appropriate, it would have retained language proposals it had initially advanced since it would be bound to a longer agreement.

LELS urged acceptance of its position on duration due to lack of data and the uncertain economic situation.

City Argument

The City argued that by the time this award would be issued, the parties would be five months into 2010. The City maintained that all the other City employees would be settled through 2010 with at most a wage reopener for 2010. The City contended that, if LELS were to prevail on duration, it would be the only unit bargaining for anything other than wages for 2010. The City urged acceptance of its position on duration for stability and internal consistency.

Discussion

LELS did not note Miller's other and primary rationale for issuing a one-year award in 2008, which was to align bargaining among all the City's bargaining units. Miller stated:

> By having the contract duration period end on the same day for virtually all City employees places all employees on the same "playing field" for negotiation of successor collective bargaining agreements. (Miller, 2008 at p. 4).

The LELS argument that it would have retained requests for language changes if it knew it would be bound to a longer contract is unpersuasive. First, if these unspecified language changes were of sufficient importance, LELS had the opportunity to advance these issues for this arbitration since it was aware that the City was seeking a longer duration. Second, the delay of imposition of language changes for the seven to eight months until 2011 is not deemed particularly onerous.

The City's arguments regarding the timing of bargaining and internal consistency are accurate. The City's position for a 2010 wage only reopener addresses the LELS concern of lack of settlement data and economic uncertainty.

The City's position of a two-year duration for 2009 and 2010 with a wage only reopener for 2010 will be awarded.

ISSUE 2 – WAGES – ARTICLE 9.1

LELS Argument

LELS cited several arbitration awards in support of consideration of four factors in rendering decisions on wages: External market comparisons, internal equity, the Employer's ability to pay for the Union's requested increase, and the cost of living and other economic factors.

LELS argued that external market comparisons should be the paramount consideration in determining the wage issue. LELS cited several arbitrators (Miller, 1998; Martin, 1998; Gallagher, 1998; and Boyer, 2006) in support of this contention. LELS maintained that its position on wages moves them slightly closer to the market average while the City's position on wages moves them significantly behind the market average.

LELS differentiated its view of market data from the City's by pointing to its focus on the market average versus the City's focus on rankings among the comparability group. LELS averred that its focus was on the truer measure.

LELS excuses its exclusion of longevity in wage comparisons as a separate benefit from wages. LELS asserted that, even with longevity, the City's monthly pay for patrol officers only moves the City's patrol officer pay to "very close" to the market average.

LELS argued that internal equity is comprised of two elements: Compliance with the Minnesota Pay Equity Act and an internal wage pattern for all City employees. On the first of these components, LELS pointed to the City's 2008 compliance with the Pay Equity Act. LELS contended that the City's argument on internal equity failed because in 2006 the City granted "market adjustments" for groups below the market average. LELS maintained that this is exactly the argument it is making for its wage proposal.

LELS cited arbitrators (Martin, 2001; Bard, 2007) in support of its contention that external market comparisons should prevail over internal equity in bargaining and arbitration.

LELS limited its argument regarding cost of living and other economic factors to a recitation of the 2.7% increase in the CPI-U noted in the Findings of Fact and a supportive quote from *How Arbitration Works, 6th Ed.*, Elkouri and Elkouri. 2003.

LELS argued that the City has adequate resources to support its proposal, is in sound financial health, and has the ability to pay the Union's wage proposal. The Union cited its projected cost of the Union's wage proposal at $28,650.23 (calculated on 18 officers) as being only .2% of the City's investment portfolio and only 1.1% of the City's undesignated General Fund balance at the end of 2008. [Figures presented in the Findings of Fact]. LELS averred this as critical to its argument that the City has the ability to pay for the Union's wage proposal. LELS maintained that a reallocation within the City's General Fund should be simple even if no new revenues were created. Nevertheless, LELS asserted that the Union should not bear the entire burden of budgetary woes.

City's Argument

The City argued that it is customary for arbitrators to consider ability to pay, internal equity and external or market comparisons.

The City maintained that the Union's wage demand is unsupported by the record "in the face of the most serious financial crisis experienced by Minnesota cities in decades." The City contended that LELS understated the cost of its proposal since it failed to account for the 14.1% PERA (State Pension Fund) and the Medicare 1.45% employer tax. Furthermore, the City claimed, any wage increase accorded to LELS will, pursuant to a long history of uniform wage settlements, "ultimately be replicated in all other groups." The City estimated the conservative cost of a 3% wage increase would exceed $250,000.

The City cited Arbitrator Miller in City of West St. Paul award (January 2010) regarding the State's dismal financial outlook and a projected deficit of $5.426 billion. The City maintained that the State budget shortfall directly impacts the LGA it receives and the City is more vulnerable to these cuts than any of the comparable cities.

The City argued that it is facing $557,000 in cuts in 2010 between cuts in LGA and the Market Value Homestead Credit. The City also argued that the State must drastically reduce state aid to attain the constitutionally mandated balanced budget.

The City pointed to budget cuts it had already implemented by freezing equipment purchases, curtailing services, freezing wages, and laying off employees. The City cited 2010 budget cuts totaling $608,608.

The City asserted low median household income, high unemployment, high percentage of families living below the poverty line, and high foreclosure rates as unique local conditions indicative of a bad local economy.

The City also touted the lowest General Fund percentage of expenditures among all the comparable cities in 2008. The City maintained that it is critical that the Union's demand for a 3% wage increase be rejected and its 0% proposal be awarded.

The City addressed the internal equity issue, in part, by citing Miller's 2008 award relating to police officers' pay as it relates to other City positions in which he indicated officers were paid above the "predicted pay" line. The City argued that this supports its position of a 0% pay increase for 2009 since all other City employees bargained to have their wages frozen. The City maintained that a 1% general wage adjustment must be awarded to maintain internal parity.

For external or market comparisons, the City faulted LELS for not including longevity in its calculations. Again, the City cited Miller's 2008 award wherein Miller refers to longevity as "simply another form of salary compensation." The City pointed to its middle ranking of eighth of fourteen as being in the middle and asserted a 0% wage increase would not disturb this ranking.

The City also lauded its own ranking of third among comparable cities for 2009 at the starting wage even with a wage freeze. The City contended there was no support in the external comparisons for a 3% wage increase.

Discussion

External comparability data shows an average wage increase among 13 comparable cities for 2009 of 2.92%. Wages for settlements in 2010 for seven cities average 1.25%. It must be noted that of these seven settlements for 2010, three cities have bargained wage freezes and another has bargained a nominal ¼% wage increase.

The undersigned concurs with Miller in his characterization of longevity as a form of wage payment. It is, however, a distortion when looking only at the top wage rate when less

that 25% of the employees receive the maximum longevity and more than 50% of the bargaining unit employees receive no longevity. It may have been more edifying to know the mid-range among comparables or the actual average wage of the employees in the grouping.

Even giving some deference to inclusion of longevity, the positional move from eighth to seventh in top pay in 2009, Brainerd reversing positions with North Mankato, would be temporary when considering North Mankato has bargained a 2010 wage increase of 3%. This wage increase is very unlikely to be matched in 2010 by Brainerd.

It is difficult to justify why Brainerd patrol officers should take a significant step backwards from similarly situated patrol officers in the comparability group. It would generate extreme pressure to "play catch-up" in future years with market adjustments.

This factor for consideration favors the Union's position on wages for 2009.

Internal equity clearly favors the City's position on 2009 wages. Having bargained 0% wage increases for all other City employees, the equitable thing would be for LELS to receive a 0% wage increase. This would be a very simplistic viewpoint. What has occurred in bargaining is a built in potential equalizer with wage reopeners for nearly all other units for 2010. The City has an immediate opportunity to remedy any internal inequities that might be generated through an award favorable to the Union. The City may or may not wish to do so, but the opportunity is present.

The cost of living and other economic factors has the CPI-U at 2.7% for the relevant period. This alone would favor the Union's wage proposal. However, the declining economic climate locally, within the State, nationally, and globally paints a very dismal picture. The City's position is reflective of where the economy is now.

There is temporal displacement between the end of 2008 and March 2010. Should the undersigned look to where the parties were at the point in time when a successor agreement should have commenced? Does the current state of economic affairs hold sway in impacting what should be imposed retroactively sixteen months in the past? These are not easy questions and each party has a vested interest in what the answers might be. The answer to the first question favors the Union's position. The answer to the second question favors the City's position.

The City looked at its General Fund in its arguments about its ability to pay. It lamented the recisions of LGA and other funds in 2009 and 2010. It pointed to cuts made in General Fund line items throughout 2009 and 2010. What was conspicuously lacking was any discussion concerning any diminution of its $38 ¾ million net assets, over $12 million in investments and nearly $2 ½ million in General Fund balance.

The economy surrounding the City has soured significantly, and the City has lost nearly $1,000,000 in LGA funding over 2009 and 2010. The City has taken austerity measures commensurate with the fluctuations in its General Fund. The City has not persuaded the undersigned that it is in as poor an economic condition as many of the City's inhabitants. The

City could have shown where it had to curtail its investment portfolio if it had needed to do so. The City could have shown how it had to transfer investments into the General Fund to maintain its operations if it had been required to do so. The City did none of the above.

Secondly, the City has cut the police department more severely than any other department. These cuts alone are more than ample to cover the cost of the Union's requested wage increase of 3%. The department's loss of 15.85% of its bargaining unit work force also means those remaining are expected to do more with fewer people.

The City clearly had at the end of 2008, and still does have, the ability to pay the wage increase of 3% for 2009 that LELS has proposed.

In conclusion, external comparability strongly favors the Union's position on wages. Internal equity favors the City's position on wages but is tempered by reopeners in 2010. Cost of living favors the Union's position, but other economic factors favor the City's position. Finally, the City has the ability to finance the Union's wage proposal.

For all the above reasons, the undersigned issues the following:

AWARD

The City's position is awarded on duration. Article XXIV shall read:

ARTICLE XXIV – DURATION

24.1 This AGREEMENT shall become effective January 1, 2009 and shall continue in effect through December 31, 2010 except for a reopener to bargain wages only for January 1, 2010 through December 31, 2010, and from year to year thereafter unless notice of intention to change, modify or terminate is given by either party sixty (60) days prior to December 31st of the year in which the change, modification or termination is to take place.

The Union's wage increase for 2009 is awarded. Article IX, Section 9.1 shall read:

ARTICLE IX – WAGES

9.1 The following pay schedule will be effective January 1, 2009:

RATE

Per Month Per Hour

Effective January 1, 2009 (3% increase)

First Year	$4,103.61
Second Year	$4,414.61
Third Year	$4,476.34
Fourth Year	$4,554.15

DATED this 2nd day of May, 2010.

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Charles E. Boldt, Arbitrator

CERTIFICATE OF SERVICE

I certify that on the 2nd day of May, 2010, I served the foregoing Interest Arbitration Award upon each party to this matter by mailing a copy to their respective addresses shown below:

Thomas Fitzpatrick, City Attorney
411 Front Street
P.O. Box 367
Brainerd, MN 56401

Nicholas Wetschka, Business Agent
LELS
327 York Avenue
St. Paul, MN 55130

I further certify that on the 2nd day of May, 2010, I submitted this award electronically to the Bureau of Mediation services by e-mailing it to Carol.Clifford@state.mn.us.

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Charles E. Boldt, Arbitrator