

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

Interest Arbitration

TEAMSTERS UNION, LOCAL 320

-and-

B.M.S. Case No. 09-PN-833

**THE METROPOLITAN COUNCIL
METRO TRANSIT POLICE DEPT.**

**Before: Jay C. Fogelberg
Neutral Arbitrator**

Representation-

For the Union: Paula R. Johnston, Gen. Council

For the Council: Frank J. Madden, Attorney

Statement of Jurisdiction-

In accordance with the Minnesota Public Employment Relations Act ("Act"), the Commissioner of the Bureau of Mediation Services for the State of Minnesota ("Bureau"), initially certified six (6) issues at impasse in connection with the parties' (new) 2009-10 Collective Bargaining Agreement, on June 15, 2009. Subsequently however, the list was revised as the parties had pared the outstanding issues down to two on February 1st of this year. The certification followed a declaration of impasse, and

an agreement by the parties to submit the outstanding issues to binding arbitration pursuant to the provisions of M.S. 179A.16, subd. 2. Subsequently, the undersigned was notified by the Commissioner on March 25, 2010, that he had been selected as the Impartial Arbitrator to hear evidence and arguments concerning the outstanding issues, and to thereafter render an award. A hearing was convened on May 18, 2010, at the Bureau's offices in St. Paul. Following receipt of position statements, testimony and supportive documentation, the parties indicated a preference for submitting written summary briefs. They were received on June 5, 2010, at which time the hearing was deemed closed.¹

Preliminary Statement-

This matter arises from an impasse that has been certified by the Bureau earlier this year between the Teamsters Union, Local 320 (hereafter "Union," or "Local") which represents approximately fifty-seven full time law enforcement personnel working for Metropolitan Council's Transit Police Department ("Employer," "Department" or

¹ The record was left open for three days following the hearing by agreement of the parties for the purpose of possibly submitting additional supportive documentation.

"Administration").

Metropolitan Council was established in 1967 with the assigned task of coordinating the planning and development of the seven counties that comprise the Greater Twin Cities Metropolitan Region. They are: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. Following its establishment in 1967, additional legislative action merged the functions of three agencies – the Metropolitan Transit Commission, the Regional Transit Board and the Metropolitan Waste Control Commission - into the Metro Council. The Council's Transportation Division works with local communities within the region to provide, among other services, public transportation in the form of buses, light rail and the metro mobility program.

The Division has its own police force which provides public safety for the customers and operators who make use of the Employer's transportation services in the seven-county metropolitan region.

As previously observed, the parties were unable to negotiate a successor collective bargaining agreement to their first contract which covered the calendar years 2006-2008. Accordingly, under the applicable terms of the Act, they submitted their final positions on the

outstanding issues to the Bureau, and thereafter Commissioner Steven Hoffmeyer, certified the matter at impasse.

The Issues-

1. Wages, Step Progression & Longevity Increases (if any) for calendar year 2009.
2. Wages, Step Progression & Longevity Increases (if any) for calendar year 2010.

**Issue No. 1
Wages, Step Progression & Longevity
2009**

Union's Position: For the first year of the new Agreement, the Union is seeking a 3% general salary adjustment for all members of the bargaining unit effective January 1, 2009, and that officers receive their step increases on the existing salary schedule set forth in Addendum "A" of the 2003-06 Contract. Additionally, the Local proposes to amend the existing longevity pay provisions calling for a progressive increase of 5, 7 and 9% of an officer's base rate after 5, 10, and 15 years of continuous service respectively.

Department's Position: The Employer is proposing no general wage increases for the term of the new Agreement; the suspension of step and

longevity progression effective January 1, 2009, and; eliminating longevity for new employees hired on or after August 1, 2010. In addition they seek reimbursement from the bargaining unit members for any pay progression adjustments received in calendar year 2009.

Issue No. 2
Wages, Step Progression & Longevity
2010

Union's Position: For the second year of the new Agreement, the Union is seeking a 2% general salary adjustment for all members of the bargaining unit effective January 1, 2010; to provide the officers with their normal step increases on the salary grid where applicable, and; to receive their longevity steps if eligible.

Department's Position: The Employer is proposing no general wage increases for the term of the new Agreement; the continued suspension of step and longevity progression effective January 1, 2009, and; eliminating longevity for new employees hired on or after August 1, 2010. In addition they seek reimbursement from employees for any pay progression adjustments received in calendar year 2010.

Analysis of the Evidence-

Minn. Stat. 179A.16, Subd. 17, in relevant part, provides:

“the arbitrator...shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.”

The history of interest arbitration in this state demonstrates that in the past, while the reviewing neutral would most certainly examine and reflect on an employer's ability to fund either side's position, it was often not the criterion given the greatest weight. This was due in no small measure, to the relative financial health of the employer and *inter alia*, the state's economy. Rather, it was the external market conditions for years, that seemed to be the most influential factor in the course of an arbitrator's deliberations. Indeed, on many occasions, the employer would acknowledge that their ability to pay was not an issue.

Unfortunately, that has changed.

One would have to have been in a coma for the past few years in order to legitimately claim ignorance over the current economic condition. Not only in this state, but nation (if not world) wide. It is not necessary then to expound upon the eroding economy here. Suffice to say that the existing recessionary climate in which public employers

operate today, and the relative hardships that this has caused and continues to cause, heightens the arbitrator's consideration of the statutory mandate of public employers to, "....efficiently manage and conduct their operations within the legal limitations surrounding the financing of (their) operations."

That the Metropolitan Council is closely tied to the state's economic condition, is unrefuted. The evidence shows that it is a cabinet level department of the government, and as such has been instructed by the state to reduce budgets as the Governor and the legislator have unallotted millions of dollars in financial aid to cities, counties, human service programs and higher education (Employer's Ex. 17). These decisions most certainly have an adverse effect on organized public employees – particularly those who are seeking to negotiate a new labor agreement covering the year 2009 and beyond.

The Council's funding sources, over and above the state's contribution, include federal funds, user fees such as transit fares, and monies generated from the Motor Vehicle Sales Tax ("MVST") reserves – the latter of which constitutes some 29% of their transportation budget.

The Union counters by accurately noting that the Employer's

undesignated fund balance currently stands at approximately \$9.7 million dollars (Employer's Ex. 34). They argue that despite the down economy, it is significant that the Administration has managed to increase the fund balance by nearly \$6 million dollars in 2008 alone. In particular, they point to an article authored by Regional Director Tom Weaver in a May 2009 biweekly Council publication called "The Wire" (Union's Ex. 5). Therein Weaver notes that "...our programs are (financially) better off than anyone could have expected," and that through legislative action which, among other things, included a temporary shifting of property tax levies, the Council was able to avert a "budget crisis for the next biennium (*id.*). When this evidence is coupled with the MVST reserve of \$19 million dollars, the Local asserts that the Council's financial health is in far better condition than they seek to portray it. The Union contends that these monies are available to fund their modest request for wage increases in each year of the new Agreement.

The Local's argument however, must be tempered by the testimony of the Employer's Director of Finance, Tom Petrie and the accompanying documentation. This evidence shows that the MVST is a relatively unstable revenue source as it depends directly on the sale of

automobiles in the state which has fallen significantly short of earlier projections. Further, according to the Director, the Transportation Division was able to balance their budget in 2010 primarily through the use of one-time stimulus funds, the use of reserves, and fund transfers. (Council's Ex. 34). The Union seeks to reveal the Employer's economic condition as being far better than the Administration has represented. This is due in part to the current status of the undesignated fund balance. However, I have been influenced by Mr. Petrie's testimony that the fund transfers and stimulus monies the Department has received are more of a one-time shot-in-the-arm. He acknowledged that while the budget is balanced for the 2010-2011 biennium, it is primarily the result of the federal stimulus program and the attendant planned construction of the central corridor light rail in the Twin Cities. This must necessarily be contrasted with improvements in wages for bargaining unit members which are on-going and include roll-up costs associated with payroll taxes, PERA contributions and FICA.

The Employer's internal comparison argument and the Local's response to it, has also been taken into consideration. I have no disagreement with Council's assertion that the with the advent of the Pay

Equity Act, the weight given to this factor has increased in significance over the past fifteen-plus years *vis-à-vis* external market conditions. At the same time however, it should not, of any by itself, control the outcome of a dispute involving wages and benefits in the public sector.

In this instance, the Council has emphasized the 2% parameter unilaterally established for negotiations by the Administration which, according to the testimony of the Council's Assistant Human Resources Director, Sandi Blaeser, was established in January of 2009. It was explained that the percentage increase target was influenced by the fiscal constraints placed on the Employer by the Legislative Commission, and a "costing model" for wages and health insurance. According to the Employer, this 2% target has been effective as two of the thirteen bargaining units (excluding the full-time police officers) it negotiates with, have settled their new contracts within the pre-established range. Three others have been offered similar settlements or are voting on accepting them (testimony of Ms. Blaeser, Employer Exs. 42-45).

While arbitrators most certainly must remain cognizant of internal settlement patterns and their relative significance when considering the arguments of the parties to an interest dispute, the 2% parameter relied

upon by the Council in this instance, begins to lose altitude when considered in light of the applicable provisions of PELRA and the confusing supportive data submitted.

As the Local has observed, M.S. § 179A.07, subd. 2(a) obligates a public employer to “...meet and negotiate in good faith,” with the duly elected representative of the employees. Further it notes that this duty exists, “...notwithstanding contrary provisions in a municipal charter, ordinance, or resolution.” I would concur with the Union that setting an inflexible parameter in advance of negotiations and expecting the Union (and the arbitrator) to rubber stamp its approval, does not satisfy the statutory requirement imposed by the legislature. An employer’s responsibilities outlined in M.S. §179A.16, subd. 7 of the Act do not allow it to unilaterally determine the terms and conditions of a collectively bargained contract. Indeed the Administration’s argument, carried to an extreme, would mandate that all employees of the Council receive the exact same increase in their wages and benefits set by management in advance of any bargaining.

In connection with their 2% internal settlement argument, the Council offered into evidence their Exhibit 42 which purported to show a

consistent historic pattern of settlements among the fourteen separate bargaining units representing the vast majority of its work force. According to the Employer, the data demonstrates conclusively that their pre-set parameters have been honored over the past six years. In light of this documentation and the additional supportive data (Exs. 43-45A) the Administration cautions that any award that exceeds the 2% limitation here, would result in "whipsaw bargaining" by other employee units within the Council, thereby undermining the negotiation process itself.

Employer's Exhibit 57, the Award of Arbitrator Bognanno between the Council and the Police Department Captains and supervisors, (BMS Case No. 08-PN-1141) indicates that last year management negotiated contracts with seven bargaining units, four of which resulted in costs that exceeded the pre-established settlement parameters (at p. 19). Moreover, a second arbitration award issued by Tom Gallagher between Metro Council and the MANA bargaining unit (BMS Case No. 08-PN-0048) exceeded the parameters as well by approximately 1.12% and yet no evidence of a whipsaw effect was demonstrated.

The Union has succeeded in raising a number of legitimate questions concerning Employer's Exhibit 42. More particularly, the

colored-coded graph (which purports to correspond to various cycles representing the terms of contracts negotiated with a dozen separate bargaining units) lacks clarity. Council maintains, for example, that the expired contract for the unit here under consideration, which had a term ending date of 12/31/08, was in the red cycle which had been assigned an 8% parameter over three years. Yet at the hearing it claimed that as depicted, the exhibit was inaccurate inasmuch as it showed the police officers' prior agreement to fall within the blue cycle which was assigned a 6% parameter over three years (testimony of Ms. Blaeser). An examination of the document however, would seem to indicate that the prior contract covered at least a portion of the blue cycle, and that the one now under consideration falls partially within the time period represented by the color red. The red cycle, as previously noted, had a higher pre-set parameter at 5½% for a two year agreement as opposed to a 2% maximum for the one designated in yellow.²

The inconsistencies and resulting confusion lead to the conclusion that the Employer's assertion regarding strict adherence to the 2% cap set by the Administration, should be somewhat discounted.

² No other contract in the yellow cycle begins prior to January 1, 2010, and all run through the calendar year 2011 (*id.*).

Both sides agree that historically the suburban communities of the Twin Cities that comprise the Stanton Group V have been used for external comparison purposes. While Stanton V no longer exists as a formal grouping of cities, the Union and the Employer have submitted data that essentially utilizes the same collection. The data submitted by both sides is sparse, however, and therefore of limited evidentiary value. Nevertheless it is noted that for the brief period of time that the police officers unit has been represented by Local 320, their wages have been at or above average when compared to the market. Employer's Exhibit 51 indicates that for calendar year 2010, the vast majority of cities in the grouping have settled at 0%, making their final wage position more relevant. At the same time however, the exhibit demonstrates none of the communities that have agreed to a new contract with their law enforcement personnel have omitted step adjustments. Further, only one (Blaine) has grandfathered the more senior members of its force for longevity pay eligibility.

It has also been noted that with regard to attraction and retention of officers, the Council has, since January of 2009, received 412 applications in the process of hiring seventeen additional officers

(Administration's Ex. 39); an indication that their wage and benefit package is market competitive.

The Union has costed their final position for both years at 7.84% which they maintain is 2.34% higher than the Employer's parameter, assuming part of the new contract term falls within the red bar period expressed in Council's Exhibit 42. As previously noted however, the weight given to the data contained in that document is not completely reliable. The Employer has costed their final proposal for the new agreement at just under 3% for both years. This includes wages and health insurance. In calculating the employees' proposal, on the other hand, the Administration contends that an award of their position would result in an increase of 8.78% in 2009 and 5.24% in 2010, which is significantly above the 2% annual target.

The Employer's estimation of the Union's final position takes into consideration the step increases and longevity (See: Council's Ex. 45A). I am persuaded by the evidence however, that historically those benefits have not been a part of the costing model. In the course of her testimony, Director Blaeser acknowledged as much, and Arbitrator Bognanno's award from last year appears to echo her remarks

(Employer's Ex. 57; at p. 18).

The Union's final position seeks a continuation of the step and longevity pay that was established in the parties' first collective bargaining agreement, while the Employer has sought the suspension of both as well as the elimination of the longevity progression altogether for all officers hired on or after August 1st of this year.³ The Employer is also proposing a "pay back" by each member of the bargaining unit who received pay for step and/or longevity retroactive to January 1, 2009. According to the Union's (unchallenged) calculations the reimbursement would amount to more than \$170,000 from the affected employees, which translates to repayment amounts ranging from \$380 to \$8,000 (Union's Ex. 20).

I would concur with the Local that the Employer's position in this regard is simply untenable. It would be patently unfair to require the members of this bargaining unit to now repay wages and benefits they earned under the terms and conditions of their first contract negotiated only a few years ago. To do so would have a detrimental effect on future good faith bargaining as well. Moreover, it would require the Local to

³ Little or no supportive evidence was proffered regarding the grandfathering of the longevity pay benefit by the Administration.

negotiate steps and longevity adjustments back into the Master Agreement at the next round of bargaining. Should the Employer seek their removal then it is incumbent upon them to do so at the negotiations table, rather than in an interest arbitration setting such as this.

Award-

Based on the foregoing analysis I conclude that a 0% general wage increase in each year of the parties' 2009-2010 Agreement, with step movement and longevity pay applied in both years based upon the individual bargaining unit member's eligibility is most appropriate. This remedy is fair, reasonable, and supported by the evidence in the record. It is comparable to the general monetary settlements reached with other internal bargaining units, while at the same time remaining competitive in the market setting. This decision is also consistent with the existing economic conditions facing the Employer, and falls within their budgetary constraints. It is therefore, awarded. The Employer's proposal to eliminate the longevity benefit for those hired after August 1, 2010, is rejected.

Respectfully submitted this 28th day of June, 2010.

Jay C. Fogelberg, Neutral Arbitrator