

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION
)
 between)
)
 City of Mounds View, Minnesota)
) BMS Case No. 10-PN-0957
 -and-)
)
 Law Enforcement Labor Services,)
 Inc., Local No. 204 (Police)
 Officer Unit)) September 29, 2010
))

APPEARANCES

For City of Mounds View, Minnesota

Robert A. Alsop, Attorney, Kennedy & Graven, Minneapolis,
Minnesota
James Ericson, City Administrator
Desaree Crane, Assistant City Manager
Mark Beer, City Finance Director

For Law Enforcement Labor Services, Inc., Local No. 204

Nick Wetschka, Business Agent
Kevin Hinrichs, Business Agent
Tim Wolf, Union Steward
Jeremy Hellpap, Union Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 204

(hereinafter referred to as the "Union" or "LELS") is the
exclusive representative for 14 non-supervisory essential
licensed Police Officers employed by the City of Mounds View,
Minnesota (hereinafter referred to as the "City" or "Employer").

The City and Union (hereinafter referred to as the
"Parties") are signatories to an expired contract that was

effective January 1, 2008, and remained in full force and effect until December 31, 2009.

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 April 7, 2010, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On April 8, 2010, 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. Insurance - Health Insurance Employer Contribution - Article 17.3
2. Overtime - Comp Time Bank Increase - Article 14
3. Wages - Wages - Article 31, Appendix
4. Duration - Contract Year 2010 and 2011, Article 30

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 August 13, 2010, at 9:00 a.m. at City Hall, 2401 Highway 10, Mounds View, 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 Parties

elected to file post hearing briefs with a due date no later than August 30, 2010. The post hearing briefs were timely submitted by the Parties and received by the Arbitrator via e-mail on that date, but after the close of business hours. The Arbitrator then exchanged the briefs via e-mail on August 31, 2010, the next business day, after which the record was considered closed.

The Parties resolved Issue Number Two, Overtime - Comp Time Bank Increase - Article 14 prior to the hearing.

The Employer submitted to BMS on April 22, 2010, as part of their final positions, an issue relating to uniforms, seeking a change in Article 20 of the current contract. The Union objected at the hearing by arguing that uniforms was not an issue certified by the BMS Commissioner for arbitration. Since uniforms was not an issue certified by the BMS Commissioner in his April 8, 2010 Request for Final Positions and Certification to Arbitration letter to the Parties, the Arbitrator will not render a decision on this matter.

**ISSUE FOUR: DURATION - CONTRACT YEAR 2010 AND 2011, ARTICLE 30
POSITION OF THE PARTIES**

The current, expired collective bargaining agreement provides for a two-year term, effective as of January 1, 2008 and shall remain in full force and effect until December 31, 2009. The Union proposes a one-year term as of January 1, 2010

and shall remain in full force and effect until December 31, 2010. The City proposes a two-year term as of January 1, 2010 and shall remain in full force and effect until December 31, 2011.

AWARD

The duration of the collective bargaining agreement shall be for a one-year term as of January 1, 2010 and shall remain in full force and effect until December 31, 2010.

RATIONALE

Although duration was certified as Issue Number Four, it determines whether the Arbitrator renders an award on wages and health insurance for 2011, which were both certified by BMS as being appropriate issues for consideration by the Arbitrator. As a result, the issue of duration must be decided first rather than last.

The City has a population of approximately 13,000 residents and is located appropriately ten miles north from both Minneapolis and St. Paul, Minnesota, on or near Interstate Highway 35W and State Highway 10. The City typically employs 49 permanent full-time employees, 38 of which belong to one of the four unionized bargaining units representing City employees. Currently, 14 Patrol Officers are represented by LELS Local No. 204, three Police Sergeants are represented by LELS Local No.

232, 10 Public Works employees are represented by the Public Works Collective Bargaining Unit, and 11 other employees are represented by AFSCME Council 5, Local No. 2686. Thus, the Patrol Officers Bargaining Unit is the largest in the City, followed by the AFSCME Bargaining Unit, third is the Public Works Collective Bargaining Unit, and last is the Sergeants Bargaining Unit. The only settled unionized City employees for 2010 and 2011 are those in the Public Works Collective Bargaining Unit, the third largest in the City. This leaves the largest two unionized bargaining units and the smallest unsettled at this time. Most certainly, the third largest group of unionized employees should not be the absolute guiding force in resolving the issues at impasse in this case for the largest unionized group in the City.

The Union's position for a one-year 2010 contract is a more realistic approach due to the economic uncertainties in our local, state, and national economies and how these may adversely impact on the City in terms of future revenues. The Union's position for a one-year contract is also more realistic as it will allow the Parties to immediately resume successor collective bargaining for 2011 on wages and health insurance, which are the compelling issues at impasse for 2010, once all of the 2011 revenues are known to the City.

One important consideration in any interest arbitration is external comparability, a comparison of similar employees to similar political subdivisions. The Union proposes a comparability group of Stanton Group 6 cities, which includes Mounds View and 26 other comparable cities in terms of population. The survey of Stanton Groups have long been the universal standard of comparison in interest arbitration. The City, on the other hand, deviated from Stanton Group 6 and selected a comparability group of 16 cities (excluding Mounds View), which they allege are more comparable to Mounds View in size and other similar factors. There are nine cities in the City's proposed Select Group which are not in Stanton Group 6. In any event, whether the Arbitrator relies on one or both of the Parties' proposed comparability groups does not matter, since only seven of the twenty-six cities in Stanton Group 6 have settled for 2011, and only two out of sixteen cities have settled for 2011 under the City's Select Group. Clearly, the lack of external wage settlements makes it virtually impossible to render a fair and equitable salary award for 2011.

As a result of the Arbitrator's award for a one-year contract for 2010 only, the remaining wage and health insurance issues pertaining to 2011 are moot.

**ISSUE ONE: INSURANCE - HEALTH INSURANCE EMPLOYER
CONTRIBUTION - ARTICLE 17.3**

POSITION OF THE PARTIES

The current collective bargaining agreement in Article 17.1 states the following:

The EMPLOYER will contribute a maximum amount of \$782.20 per month in 2008 and \$832.20 in 2009 to each full-time permanent employee for group health, dental, and life insurance dependant coverage; patrol officers will be offered the same health, dental, and life coverage offered to all City Employees.

The Union proposes the following contract language in Article 17.1 for 2010:

The EMPLOYER will contribute a maximum amount of \$867.33 per month in 2010 to each full-time permanent employee for group health, dental, and life insurance dependant coverage; patrol officers will be offered the same health, dental, and life coverage offered to all City Employees. The EMPLOYER will contribute \$1,200 of the HSA deductible for single and family coverage in 2010 for employees enrolled in the HSA plan.

The Employer proposes the following contract language in Article 17.1 for 2010:

The EMPLOYER will contribute a maximum amount of \$842.20 per month to each full-time permanent employee for group health, dental, and life insurance dependant coverage; patrol officers will be offered the same health, dental, and life coverage offered to all City Employees.

AWARD

The following contract language in Article 17.1 shall read as follows for 2010:

The EMPLOYER will contribute a maximum amount of \$867.33 per month in 2010 to each full-time permanent employee for group health, dental, and life insurance dependant coverage; patrol officers will be offered the same health, dental, and life coverage offered to all City Employees.

RATIONALE

The BMS incorrectly listed the disputed language in this health insurance issue as Article 17.3. In reality, the Parties agree that the disputed contract language is Article 17.1.

Internal consistency among all employees in the political subdivision is given great weight by arbitrators when deciding appropriate insurance awards. In the instant case, there is only one settled unionized employee group in the City -- Public Works Collective Bargaining Unit, which represents ten employees and is the third largest group in the City. Since three other remaining unionized groups, including the largest (Patrol Officers) and the second largest (AFSCME employees) have not settled their contracts for 2010, for the Employer to now claim an internal pattern exists based on the third largest unionized employee group would be patently unfair and unreasonable.

In addition to the Public Works Collective Bargaining Unit, the City also increased their health insurance contribution by \$10 per month for non-union employees that total eleven in the City. The status of non-union employees is not persuasive. Non-union employees do not have the statutory right to collective

bargaining for any of their terms and conditions of employment. Instead, they receive what the Employer is willing to give them. Thus, they are at the mercy of the Employer. Non-union employees are also not the largest employee group in the City, but are tied for the second largest. The largest is the Patrol Officers. Based on its size, compared to all other employee groups in the City, the Police Officer Bargaining Unit should be the leader and not the follower for health insurance.

The negotiation history of the Parties strongly supports the Union's position. The Parties have negotiated approximately \$50 per month health insurance increases each year in the Employer's contribution since 2007. (Union Exhibit, p. 6). The Union is only seeking an increase of \$35.13 per month for 2010.

Not only has the City increased their contributions to health insurance, they have also increased wages since 2007. However, if the nominal increase of \$10 per month, as proposed by the Employer, had been awarded along with a 0% wage increase, the Patrol Officers would actually receive less overall compensation in 2010 than in 2009 by absorbing the health insurance premium increase, without an off-setting wage increase. This is not a position the Union would agree to in negotiations.

The Union acknowledges it bears a heavy burden of proof that the change in contractual language, adding an Employer

contribution of \$1,200 to the HSA, is necessary. The costs associated with insurance premiums, especially traditional co-pay plans, have steadily increased over the past decade. In order to help transition the Union members away from the traditional insurance plans, the Union is proposing this language so the City covers some of the deductible cost in the HSA plan.

The Union's position as to the HSA plan ignores the City's obligation during these times of diminishing resources due to the poor economic climate and the loss or reduction of revenue streams to the City. As a result, the Union has not met its burden of proof in this regard.

ISSUE THREE: WAGES - WAGES - ARTICLE 31, APPENDIX

POSITION OF THE PARTIES

The Union's position for 2010 is a 2.0% general wage increase. The City's position is a 0% general wage increase. The City is not proposing to freeze step movement for 2010.

AWARD

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

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.).

Unfortunately, due to the economic climate of lost revenue to the City the "good old days" of automatic general wage increases to their employees may no longer exist until adequate streams of revenues increase and/or the City reduces its expenditures. Thus, the ability of the City to fund the economic demands of the Union must be thoroughly scrutinized. No longer can arbitrators simply give passive review to the financial condition of an employer. 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).

The Union argues that the only reliable budget data presented during the hearing was the 2009 City of Mounds View Comprehensive Annual Financial Report. (Union Exhibit, pp. 29-48). This, according to the Union, is the only evidence based on "hard" or "real" numbers, confirmed by an independent auditor for the calendar year ending December 31, 2009.

The Union calculated the cost of their insurance and wage proposals to be \$39,061.68 for 2010, assuming all Patrol Officers are at top pay, which they are not. (Union Exhibit, p. 27). As

of December 31, 2009, the City's assets exceeded its liabilities by \$54.3 million, with \$26.9 million available to meet the City's ongoing costs. (Union Exhibit, p. 36). The City's total investments were \$32,171,502. (Union Exhibit, p. 47). In addition, the City established a fund to offset tax levy increase, which is at appropriately \$6.6 million. (Union Exhibit, p. 45). The City's unreserved and undesignated General Fund balance was 2.7 million or 53.8% of the total General Fund, well within the State Auditor's accepted range of approximately 35-50 percent of the General Fund operating revenues or no less than five months of operating expenditures, which could be used to supplement the budget to pay for the Union's economic demands for 2010.

The financial data supplied by the Union is only a part of the City's financial condition. It is a snapshot of the City's financial condition ending December 31, 2009. What has occurred since that date to the present is more relevant, since it deals with economic factors facing the City in 2010, the year at issue in this case.

Unfortunately, the financial condition of the State of Minnesota substantially impacts the financial resources available to the City. Everyone recognizes the current economic condition for the State and most communities is tumultuous, bleak, and

cannot be ignored. In order to address the budget deficit, the State has unallotted millions in State aid to counties, cities, human service programs, and higher education. Given the fact that the State has a \$5.8 billion deficit, the City's remaining State aid is at serious risk and jeopardizes the revenue stream to the City for 2010 and beyond.

Over the last five years, municipalities have become increasingly dependent on Local Government Aid ("LGA") from the State. Due to the State's increasingly poor financial condition, as well as various political maneuvers, the City's receipt of LGA has been erratic and unpredictable. Over the last three years, the City has consistently received significantly less LGA than has been certified by the State. As of this date, the City has only received \$116,039 of the \$571,636 certified for receipt from the State in 2010. (City Exhibit #13). The receipt of additional LGA from the State before the end of the year is questionable.

The loss of revenue streams to the City are also evident by the loss of approximately \$160,156 in Market Value Homestead Credits from the State and decreasing revenues in the form of license and permit fees, fines and forfeits, and charges for City services. (City Exhibits #12, 14). Unless our economy drastically changes in the near future, the economic forecasts

indicate no improvement in the State's overall economic condition over the next few years and actually predict widening budget deficits for the 2012-2013 budget deliberations by the Legislature. (City Exhibit #16).

In anticipation of the diminishing financial resources from the State, the City budgeted conservatively in 2010 by decreasing total General Fund expenditures by \$413,880, representing a 6.79% decrease compared to the 2009 Budget. The City's overall 2010 Budget is \$5,678,009, 62% of which is attributable to personnel costs of the City. The City also budgeted for the use of General Fund reserves totaling \$170,784 in 2010, and at this point, contemplates the use of additional reserves in 2011. The City's 2010 Budget also included 0% wage increases for all employees and smaller increases in the City's insurance contribution for employees consistent with the City's proposal herein, without any additional reserves set aside for unexpected wage or benefit increases. Notwithstanding the wage freeze contemplated by the City's 2010 Budget, however, four Patrol Officers will be receiving automatic step wage increases in 2010. It is also extremely noteworthy that City Charter mandated tax levy caps limit the City Council's ability to raise additional revenue, as well as the political restraints on maximizing tax levy increases, in light of the City's ranking of 31st in per capita

tax burden out of 225 cities of comparable size in the State of Minnesota.

Notwithstanding the City's conservative budgeting approach, the actual revenues received by the City through July of 2010 are significantly below budget and City staff members are already identifying means and methods of improving the City's financial condition in 2011. (City Exhibit #17). Such options contemplated by the City include not filling open staff positions, reduction in certain City services such as broadleaf control, tree trimming, rink supervision, and finally raising permit and license fees within the City.

In addition, the cost of the Union's economic demands does not include comparable adjustment for other employee groups in order for the City to maintain its policy of internal equity or the possible adjustments to individual female employees in order to remain in compliance with the LGPEA. Affording comparable wage increases and insurance benefits to the City's other employee groups would cost the City an additional \$86,558.07 or a total of \$124,405.24 for 2010 (including Patrol Officers). (City Exhibit #10). Moreover, in the event the City is forced to use its reserves to pay an arbitration award in favor of the Union, investment revenues from such reserves would be forever lost and ongoing into the future.

Implementation of the Union's proposal with regard to both wage and benefit increases would only exacerbate the City's current financial demise and could result in additional reduction in City services and/or personnel. The City, however, can afford the Union's proposal on health insurance, since the difference in the Parties' positions on this issue is \$14,594.04 for Patrol Officers only, and an additional \$29,188.08 for the remainder of City employees. (City Exhibit #10).

An internal comparison is also one of the recognized criteria in interest arbitration. There has been a long history in the City of consistent wage settlements among union and non-union employees, except for occasional instances to maintain pay equity or to adjust for external market purposes. For 2010, a 0% general wage increase was negotiated by the Public Works Collective Bargaining Unit and a 0% general wage increase was given to non-union employees. As previously noted in the health insurance section, the Arbitrator can only give limited credence to the establishment of an internal pattern when the third largest unionized group and non-union employee, who have no collective bargaining rights, are receiving the same general wage increase.

The evidence establishes that the City is in compliance with the LGPEA. (Union Exhibit, p. 87). However, the Union's wage

proposal of 2% would render the City non-compliant with the LGPEA based on a trial run using the State's pay equity software.

(City Exhibit #8). In fact, a 1% wage increase would result in the City being non-compliant with the LGPEA. Id.

The external market comparison is an important consideration in any interest arbitration case. Whether the Arbitrator relies on the Employer's Select Group of cities or the Union's Stanton Group 6 cities, the results are very similar -- there is a strong trend for a 0% wage increase for 2010. In Stanton Group 6, there are 26 comparable cities to Mounds View with 15 being settled for 2010. Of the 15 settled cities, about one-half (7) are at 0% wage increase. The average salary increase among the 15 settled cities (and Mounds View at 0%) is 1.70%. (Union Attached Exhibit). Mounds View remains very competitive with the comparable Stanton Group 6 cities, even with a 0% wage increase, as Patrol Officers will only be .20% or \$14.30 per month below the market average. Id.

Under the City's Select Group of 16 cities, only 4 have settled for 2010, with 3 cities settling for 0% wage increase for 2010. (City Exhibit #9). The City's top pay rate for Patrol Officers is the highest among the cities in this group. Id.

Consequently, the City's proposal is externally consistent with wages paid by cities in both comparability groups.

Clearly, the wage increase trend for 2010 has been established by the comparable cities and the trend is for a 0% wage increase. It is also reasonable to assume that the vast majority of the unsettled cities for 2010, which are substantial in number under both comparability groups, will settle for 0% or nominal wage increases based on this settlement trend, since many of the employer's final wage offers are for 0% wage increase. (City Exhibit #9).

The final consideration is other economic factors (e.g., Consumer Price Index, turnover, retention rates, etc.). The CPI is a measure of the average change over time in the prices paid by urban consumers for a market variety of consumer goods and services. The CPI in July of 2009 when the City began its negotiations with the Union was -2.7%. By the end of 2009, the CPI had risen to 3.8%, but subsequently has fallen back to 1.3% as of June 2010. (Union Exhibit, pp. 209-210).

The Union claims that the 2.6% CPI is supportive of their wage proposal of 2% for 2010 rather than the 0% wage increase proposed by the City. However, it must be remembered that the Patrol Officers received a 5% wage increase in 2009 when the annual CPI was -0.7%. The foregoing comparisons exemplify the impracticalities of relying on the CPI for assessing the reasonableness of a proposed wage increase and particularly the

danger of relying on the CPI for a single month as opposed to a more statistically relevant period of time.

Finally, the Patrol Officers are not victims of disparate treatment with regards to the CPI. Whatever impact that the CPI may have on Patrol Officers is also the same impact that is being felt by all other City employees who already have received a 0% wage increase.

Attraction and retention is another component of economic factors. There was no evidence that the City has had a problem with attraction or retention of Patrol Officers based upon their wage and fringe benefit package paid to them by the City. Thus, there is no need to implement the Union's wage proposal based on attraction and retention of Patrol Officers in the City.

Based on the foregoing considerations, the evidence overwhelmingly supports a salary award of 0% for 2010 for Police Officers.

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 September 29, 2010, at Maple Grove, Minnesota.