

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICES, INC., LOCAL 18

Union

and

BMS Case No. 10-PN-1107

CITY OF PLYMOUTH,

Employer

NAME OF ARBITRATOR:	George Latimer Assistant Faith Latimer
DATE AND PLACE OF HEARING:	August 17, 2010 Plymouth, Minnesota
BRIEFS RECEIVED:	September 8, 2010
DATE OF AWARD:	October 2, 2010

APPEARANCES

FOR THE UNION:
Dennis O. Kiesow, Business Agent

FOR THE EMPLOYER:
Roger N. Knutson, Attorney
Calvin Portner, Administrative Services and Finance Director
Givonna Kone, Human Resources Manager
Laurie Ahrens, City Manager

INTRODUCTION

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. 179A.01-30. Law Enforcement Labor Services, Inc (Union) is the exclusive representative for the Patrol Officers employed by the City of Plymouth (Employer or City).

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. 179A.16)

The prior collective bargaining agreement between the parties expired on December 31, 2009. The parties negotiated for a successor agreement and agreed to some but not all provisions. On May 10, 2010 the Bureau of Mediation Services certified the following issue for interest arbitration:

Wages 2010—General Wage Rates For 2010

Hearing was held August 17, 2010. Both parties had full opportunity to submit documents and examine witnesses. Written briefs were received by the Arbitrator on September 8, 2010 and the record was closed.

UNION FINAL POSITION

Modify the language to increase the 2009 wage rate steps by 3% for 2010.

EMPLOYER FINAL POSITION

Maintain wages at the rates set forth in the 2008-2009 Labor Agreement for 2010.

UNION ARGUMENTS

The Union argues first that its wage proposal is affordable to the City. It asserts Plymouth is in very sound financial condition. Unlike many other cities Plymouth has a high level of economic activity including new construction. Median income levels are high (about \$116,000). The Union points out the City was able to lower its property tax rates in 2010, despite a drop in property values. Because it receives no Local Government Aid funds from the State, Plymouth is not negatively affected by recent cuts to that aid. The Union argues the City has a history of budgeting very conservatively, resulting in revenues exceeding expenditures in 2007, 2008 and 2009. Further, the City spends less per capita on the police portion of its budget than the statewide average. In 2009 the Union points to the City's general fund balance of about \$11.7 million, about 42% of the budget. The fund balance amount increased every year from 2003 to 2009. (Union notebook, pages 12-66, City Comprehensive Annual Financial Reports, oral arguments) In sum, the Union argues the City clearly has the ability to pay the Union's proposed increase.

With respect to market comparisons, the Union argues that among the 15 comparable communities, Plymouth officers' top pay (excluding longevity) is about \$97 per month above average in 2009. They assert that the wage freeze proposed by the City would result in the top pay dropping to about \$19 below average. The Union argues its proposal is an effort to maintain its position relative to comparable jurisdictions. (Union brief and addendum)

In terms of internal wage comparisons, the Union argues police officers should receive at least the same 2010 increase as other City workers. The AFSCME bargaining units received a 2% increase for 2010. Therefore

the Union argues its officers would fall in their wage positions relative to other employees at the same pay grade. It also argues that past wage increases which were larger for the police officers were ‘market driven’. That is, the increases were needed to attract good professional level law enforcement employees. (Union brief, notebook pages 124-134, oral argument)

Finally the Union argues economic factors support its proposal for a 3% increase. It points to Bureau of Labor Statistics figures on the Consumer Price Index showing increases of over 3% in the first half of 2010 for the Twin Cities area, and that wages in the private sector went up 2.6% from June 2009 to June 2010. In addition, the Union asserts that unlike many other cities, Plymouth is experiencing ‘boom town’ conditions relative to housing construction.(Union brief, notebook pages 188-198) Therefore the Union argues that outside economic factors favor its wage position.

EMPLOYER ARGUMENTS

The City acknowledges that over the past decade it experienced strong growth, and was in very healthy fiscal condition. However there have been significant changes since 2008. Some of the highlights of these changes are the following:

- 1) Total tax capacity rose each year from 2000 to 2008, but has declined in 2008 and 2009, and is estimated in 2011 to be at the lowest rate since 1996. Total market value of taxable property has decreased by over \$2 billion in the last two years.
- 2) Legislative changes have meant that a much greater share of the property tax burden is now borne by residential owners rather than commercial industrial.

- 3) Unallotments by the Governor meant the loss of about \$500,000 per year in 'market value homestead credit' the last two years.
- 4) The City's contribution to the fiscal disparities program has increased in recent years, in addition to paying a greater share of costs that previously were borne by the County.
- 5) The City's revenue from investments has decreased dramatically as a result of the market crisis. In 2009, this revenue amounted to \$40,000 compared to the expected \$300,000.

The convergence of these factors and others led the City to reduce its workforce by 22.6 positions over the last 20 months, about 10% of the workforce. (Employer brief, notebook tabs 3 4 & 5, testimony of City Finance Director Calvin Portner)

In response to Union assertions about its fund balances, the City points out that because of the revenue cycles (with twice per year payouts) the State Auditor recommends cities maintain a general fund balance of 35-50%. Plymouth's balance of about 40% is appropriately within that range. The City also argues that much of what the Union points to as excess balances are due to one time or unplanned events, such as street reconstruction bonds from 2003 which matured in 2010, resulting in about \$400,000 in savings. The City argues this is not the kind of event that can be counted on.

The City argues it is managing its budget for long-term sustainability, and that "It would be fiscally imprudent to spend down the City's fund balance for an ongoing increase in wages." (City brief)

In addressing market (external) comparisons, the Employer agrees with the Union regarding which jurisdictions make up the appropriate comparison group. It argues that the jurisdictions which granted larger 2010

pay increases (four cities which gave raises of 3% or better) all reached their agreements in 2008 or 2009, for contracts which included 2010. The Employer asserts that of the six cities which reached agreement in 2010, all had wage increases of either 0 or 1%. An average increase of about .5% reflects the current economic reality.

In analyzing the external comparisons, the Employer disputes the Union's method of calculating 'top wage'. LELS uses salary figures which exclude longevity and incentive pay. The City maintains its own method of calculating 'maximum earnings' is more accurate, since longevity and incentive make up a 'significant portion' of total compensation. In terms of maximum earnings ranking, the City maintains that this bargaining unit ranked tenth of the 15 comparable cities in 2007, seventh in 2008, and fifth in 2009. Under the City's proposal, Plymouth officers would move to number seven, while under the Union's proposal they would move up to number two. The City also points out its Police Chief and City Manager salaries are ranked in the lower half of the same group of comparable cities. (Employer brief, notebook tabs 6 & 7, testimony of Human Resources Manager Givonna Kone)

Addressing internal comparisons, the Employer argued that this bargaining unit received wage increases of 2% on January 1, 2009 and 2.98% on July 1, 2009, a total of about 5%. This compares to increases received by the AFSCME units of about 2% in 2009 and another 2% in 2010, still less than the 2009 raise received by this unit. In addition, the historical pattern of wage increases has been more generous for this unit, resulting in a cumulative increase of about 37% over eight years for the patrol officers, and about 30% for the AFSCME employees (slightly lower for non represented employees). Further the Employer argues these

increases have been the product of all the elements of the bargaining process, and not brought about by any competitive disadvantage in attracting officers to the Plymouth force. (Employer brief and oral argument)

With respect to cost of living, the Employer argues that wages for this unit have increased well beyond inflation levels for many years. In addition members of this unit receive regular overtime pay. Therefore awarding its wage proposal will not leave members of this unit in any difficulty compared to the cost of living.

ARBITRATOR DISCUSSION

The parties have appropriately focused on the four issues traditionally examined in interest arbitration: employer ability to pay, internal comparisons, external or market comparisons, and cost of living/other economic factors.

With respect to internal comparisons, there was no dispute with the Employer's assertion that its AFSCME bargaining units received wage increases of approximately 2% each year, 2009 and 2010, and that the patrol bargaining unit received wage increases totaling 5% in 2009. This increase cannot be ignored. It is true as the Union argues that the different nature of police officers' responsibilities, may in some circumstances justify differing (and more generous) wage increases than other bargaining units. However data presented by the Employer makes clear this unit has in fact historically benefited from more generous pay increases than the AFSCME units. Therefore, the Employer's position on internal equity is the more persuasive.

Turning to market comparisons, the parties stated the comparison group consists of all metro area communities over 40,000 in population, excluding cities of the first class. The group consists of the following 14:

Eden Prairie, Eagan, Bloomington, Brooklyn Park, Woodbury, Coon Rapids, St. Louis Park, Lakeville, Burnsville, Edina, Blaine, Maple Grove, Minnetonka, and Apple Valley. The parties have some differences in their data, for example the Employer's data reports Woodbury as having settled its 2010 agreement with no increase, while the Union does not include Woodbury as one of the cities having yet settled. In addition, the Employer disputes the validity of the Union's method of calculating top pay (described above). This may account for the differing versions of the history of this unit's salary rank. For example the Union's data describes this unit as having a salary rank of two in 2007, four in 2008, with no change in 2009. The Employer's version of the data is a rank of ten in 2007, seven in 2008, and five in 2009. (Union notebook p. 181-183, Employer brief) The Arbitrator is persuaded that the Employer's inclusion of longevity and incentive pay is the more accurate way of describing top pay levels.

The evidence as a whole does not support the Union argument that its proposed increase is necessary to maintain its relative position. The Union argues the Employer's proposal would place this unit slightly below the average of the comparison group. However, zero wage increase would still leave this unit's rank at or close to number four of fifteen, even if the Union's data is used. The Arbitrator therefore finds the market comparison favors the City's position.

Most of both parties arguments in this case centered on the issue of affordability. M.S. 179A.16 Subd 7 states:

In considering a dispute and issuing its decision, the arbitrator or panel 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.

It is undisputable that compared to most other cities in the State and the country, Plymouth is an affluent community. It has also enjoyed good fiscal management. That relative affluence must be balanced against the generally perilous economic times we are experiencing, and the well documented and very large deficit our state is facing. Prudent management of local government entities requires that the secondary deleterious effects caused by reductions in support services throughout the state, and within the counties must be considered. While Plymouth certainly has the ability to pay the Union's proposed increase, it must be acknowledged there are real threats to the City's continuing economic health. These include the changes in distribution of property tax burden, the greater city contribution to county costs, and other trends highlighted by the City.

The fiscal considerations outlined above, along with the favorable position enjoyed by this unit both internally and externally, outweigh the City's 'ability to pay' the Union's proposed increase.

The aim of an arbitrator in interest arbitration is to come as close as possible to terms that would have been bargained by the two parties, absent arbitration. Under current conditions, the Employer's position is the appropriate award.

AWARD

Maintain wage rates at the rates set forth in the 2008-2009 labor agreement, permitting step movement on the same basis as the prior agreement.

Arbitrator George Latimer

Dated: October 2, 2010