

IN THE MATTER OF ARBITRATION)	INTEREST ARBITRATION
)	
between)	
)	
City of Blaine, Minnesota)	
)	BMS Case No. 10-PN-0956
-and-)	
)	
Law Enforcement Labor Services,)	
Inc., Local No. 340 (Police)	
Sergeants Unit))	December 30, 2010
))		

APPEARANCES

For City of Blaine, Minnesota

Scott Lepak, Attorney, Barna, Guzy & Steffen, Blaine, Minnesota
Terry Dussault, Human Resources Director
Joe Huss, Finance Director

For Law Enforcement Labor Services, Inc., Local No. 340

Nick Wetschka, Business Agent
Chris Sloneker, Union Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 340
(hereinafter referred to as the "Union" or "LELS") is the
exclusive representative for licensed Police Sergeants employed
by the City of Blaine, Minnesota (hereinafter referred to as the
"City" or "Employer").

The City and Union (hereinafter referred to as the
"Parties") are signatories to an expired collective bargaining
agreement 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 all of their outstanding issues. As a result, on April 26, 2010, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On May 7, 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 2010 - Article 13
2. Insurance - Health Insurance 2011 - Article 13
3. Wages - Wages 2010 Increases - Article 14, Appendix A
4. Wages - Wages 2011 Increases - Article 14, Appendix A
5. Overtime - Addition of Comp Time Language - Article 14.2
6. Specialty Pay - Specialty Pay for Sergeants - Article 14.4 (NEW).
7. Call Back - Increase Call Back Time - Article 17
8. Duration - Contract Duration - Article 26

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 December, 1, 2010, at 9:00 a.m. at the Blaine City Hall, 10801 Town Square Drive NE, Blaine, Minnesota.

The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. Consequently, the Parties decided to waive the filing of post

hearing briefs and instead relied upon their written arguments in support of their positions on the certified issues presented at the hearing, after which the record was considered closed.

The Parties agreed at the hearing that Issue Number Two, Insurance - Health Insurance 2011 - Article 13, is no longer an issue before the Arbitrator since the Parties submitted the same final position for this issue - Article 13 be reopened for 2011 if a two-year contract term is awarded.

In addition, the Union agreed at the conclusion of the hearing to accept the Employer's position with regard to Issue Six - Specialty Pay - Specialty Pay for Sergeants - Article 14.4 (NEW). The Employer's position, as accepted by the Union, is as follows:

An employee assigned by the EMPLOYER to the job duties of Detective Sergeant will receive two hundred dollars (\$200) per month for the duration of their assignments in addition to their regular wage rate.

ISSUE EIGHT: DURATION - CONTRACT DURATION - ARTICLE 26

POSITION OF THE PARTIES

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 Eight, it is the determining factor as to whether the Arbitrator renders an award on wages and health insurance for 2011, which were both certified by BMS as being appropriate issues for decision by the Arbitrator. In fact, the Employer's position is that wages and health shall be the only two issues reopened in 2011. As a result, the issue of duration must be decided first rather than last.

As a background, the City is located in Anoka County. It had its first permanent resident in 1865 when former slave Green Chambers moved north from Kentucky following the civil war. Until 1877, it was considered to be part of the City of Anoka. In 1877 it organized into a Township of its own. Because of its sandy soils and abundant wetlands, the City remained a prime hunting area while other areas began to be farmed. Growth remained slow until starter homes began to spring up in the southern part of the City after World War II. Blaine's population went from 1,694 in 1950 to 20,640 in 1970. With the

development of Interstate 35-W, State Highway 65 and State Highway 10, Blaine became an attractive location for business and residential development. In 2002, its population grew to over 50,740 residents. Its 2009 population is estimated to be 58,020. Blaine's growth in the last decade has kept it near the top of the faster growing city in the State of Minnesota. In fact, Blaine has experienced the second greatest population growth of any city in the State of Minnesota since the 2000 census.

This interest arbitration involves the licensed Police Sergeants in the City. All of the Police Sergeants are male. The Parties are presently covered by a two-year collective bargaining agreement that expired by its terms on December 31, 2009, and continues in effect by operation of law.

It is clear that once the Arbitrator renders his decision in this case and the Parties review it, the 2010 calendar year will have expired. Thus, at first blush it would seem reasonable to award a two-year agreement for 2010 and 2011, since the Parties will have to entertain negotiations in the near future for 2011. However, there are several relevant considerations for a one-year contract that outweigh a two-year agreement.

First, there is no internal comparability for 2011, which is one of the four most important factors in any interest arbitration decision. In fact, there is no internal

comparability for 2010 other than non-union employees who total 111 out of 213 City employees. Most certainly, the non-union group, standing alone, is not persuasive evidence of any internal pattern in the City, since they have no right to collective bargaining. They merely receive wages and other terms and conditions of employment at the sole discretion of the City.

There are two unionized groups in the City other than the Police Sergeants that have not settled for 2010 or 2011. There are 46 Police Officers represented by another LELS unit, Local No. 165. There are 49 Public Works employees represented by IUOE Local 49.

There simply is not enough data for 2011 with regard to external comparability, which is another factor utilized in an interest arbitration decision. As a Twin Cities suburb, Blaine has historically viewed its comparability group as comprising the other cities that made up the former Stanton Group Five cities. There were twenty-five cities in Stanton Group Five, but only three cities have settled their contracts for 2011. This low number of settlements for 2011 would represent a skewed sampling of cities for external comparability purposes.

A third factor for consideration in an interest arbitration case is the ability of the employer to pay for the economic changes sought by a union. In this case, the economic climate

for 2011 is uncertain and unpredictable at this time and would lead to pure speculation on the part of the Arbitrator. Interest arbitrators must avoid speculation in rendering their decisions. An arbitrator's decision must be based on known facts rather than on what might or might not occur in the future.

Another consideration in this case is negotiation history. Since 1997 there have been two, three-year contracts, one, one-year contract and three, two-year contracts. Thus, there is no clear pattern as to the duration of the contracts.

Finally, the Union's final position is a one-year contract for 2010 and the City's final position is a two-year contract with only reopeners in 2011 for wages and health insurance. The Employer's position is not preferred because of the limited reopeners in 2011. By allowing the entire contract for 2011 to be negotiated, there are more alternatives or the opportunity for more quid pro quos to consider other than wages and health insurance. This gives the Parties more flexibility in reaching an agreement for 2011 and beyond, where all trade-offs can be considered rather than just limited to wages and health insurance.

Based upon the Arbitrator's decision for a one-year contract for 2010, the Parties will be allowed to negotiate on any issue for 2011.

ISSUE ONE: INSURANCE - HEALTH INSURANCE 2010 - Article 13

POSITION OF THE PARTIES

The Memorandum of Understanding between the Parties dated December 1, 2008, attached to the expired contract, states the following in relevant part:

For the purpose of the year 2009 only, the City and Union hereby agree to amend Article 13 of the current Agreement to read as follows:

The EMPLOYER will contribute Eight Hundred and Seventy Dollars (\$870.00) per month per employee to purchase required and/or optional benefits under the City's cafeteria plan for calendar year 2009.

The Union proposes the following contract language in Article 13 for 2010:

The Employer agrees to contribute nine hundred ninety dollars (\$990) per month per employee for the purchase of required and/or optional benefits of the cafeteria plan for calendar year 2010.

The Employer is not proposing to increase its contribution for health insurance in 2010. Thus, the Employer's position is to contribute the current contribution rate of \$870 per month per employee to purchase required and/or optional benefits under the City's cafeteria plan for calendar year 2010.

AWARD

Effective December 31, 2010, which is the last effective day of the 2010 contract, the Employer shall contribute the amount of nine hundred forty dollars (\$940) per month per employee for the

purchase of required and/or optional benefits of the cafeteria plan.

To avoid any misunderstanding between the Parties concerning the intent of the Arbitrator's award, as to the effective date of this award, the first health insurance premium payment by the City of \$940 per month per employee shall commence on January 1, 2011.

RATIONALE

Internal consistency among all employees in the political subdivision is given great weight by arbitrators when deciding appropriate insurance awards and other fringe benefits. In the instant case, there are no other negotiated settlements in the City for 2010. The other two organized groups in the City (Police Officers represented by LELS and Public Works employees represented by IUOE Local 49) have not reached agreement with the City on this issue and several other issues. In fact, the Police Officers have filed for arbitration with the BMS.

While it is true that the non-union employees received no health insurance contribution increase for 2010, this disclosure is not persuasive. For the Employer to claim an internal pattern exists based on the non-union employees receiving no health insurance contribution increase for 2010 would be patently unfair and unreasonable. Non-union employees did not bargain and agree

to no health insurance contribution increase by the Employer for 2010; they were simply told by the Employer that they would receive the current contribution rate of \$870 per month per employee. Thus, non-union employees had no recourse but to accept the Employer's decision to not increase their health insurance contribution rate for 2010.

The negotiation history of the Parties strongly supports the Union's position. In 2006, the Parties agreed to increase the City's health insurance contribution by \$100 to \$680 per month. In 2007, this was increased by \$50 per month. In 2008, this was increased by another \$50 per month. Finally, in 2009, the Employer contributed an increase of \$70 per month, bringing the City's contribution to \$870 per month. The average increase over that time period is \$68 per month. Thus, the award of an increase of \$70 per month for the City's contribution to \$940 per month is consistent with the average and also is exactly what was granted for 2009.

There is also a significant practical reason to make the health insurance award first payable on January 1, 2011, and thereafter until the Parties negotiate a different amount during bargaining for the 2011 contract. The City's proposed contribution is the amount that the employees are currently receiving. It is the amount that the employees utilized to make

their insurance choices for 2010. As noted in Article 13, this amount is contributed toward "the purchase of required and/or optional benefits of the cafeteria plan" for the applicable calendar year.

By the time of the arbitration award and implementation, the 2010 calendar year will be over. Any retroactive application of a health insurance premium would create difficulties with the pretax aspects of premiums and the post tax aspects of what would be a taxable payment. In addition, an employee could not retroactively purchase additional benefits. It would be a taxable wage.

**ISSUE THREE: WAGES 2010 INCREASES - ARTICLE 14, APPENDIX A
POSITION OF THE PARTIES**

The Union's position for 2010 is a 3.0% general wage increase over 2009 wage rates. The City's position is a 0% increase for 2010 wages.

AWARD

A 1% general wage increase for 2010, effective January 1, 2010.

RATIONALE

As noted previously, interest arbitrators adhere to four highly recognized considerations in rendering their decisions: 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.).

One would have to live in a cave or maybe in Iowa to not know that the economic climate locally, statewide and nationally is tumultuous. The economic crisis has a particularly negative impact on workers. In October 2010, the national unemployment rate was 9.6% with 14.8 million individuals unemployed. The national economy, particularly as it affects employees, is dire.

The State of Minnesota's financial condition is not much better than the federal government. The state faced a \$3 billion deficit in the 2010 legislative session. The final budget passed by the legislature ratified the \$2.7 billion of un-allotments made by the Governor last summer. Local government aid ("LGA") and Market Value Homestead Credit ("MVHC") were cut by \$52 million in a first supplemental budget bill. The final budget agreement contained no structural budget fixes, and the State of Minnesota will face potentially significant future deficits.

The policy decisions by the State of Minnesota have profound changes on Minnesota cities. In a paper entitled Cities, Services & Funding: Broader Thinking, Better Solutions, June 2010, the League of Minnesota Cities determined that cities of every size, in every region, will be "broke" by 2015 if no policy changes are made. By the year 2025, even metro fast growth

cities, like Blaine, would see deficits approaching 20% of city revenues. This is not permitted by law as cities must balance their budgets. The result is the necessity of a combination of service cuts and property tax increases. With little or no prospects of the State of Minnesota addressing its own budget problems, Minnesota cities will continue to struggle financially in the future.

The City is reflective of the metro fast growth cities. Robust growth prior to October 2008 slowed significantly upon the economic implosion. The City has lost significant revenue that has impacted its financial condition. First, the City has not received any LGA since 2002-2003. Like other cities in the State of Minnesota, Blaine did not receive their second half payment for the MVHC in 2008. This was a loss of approximately \$400,000. The MVHC was not paid in 2009 (resulting in a loss of this credit in the amount of \$840,000). The MVHC will not be paid in 2010 (resulting in a loss of this credit in the amount of \$666,250). The same loss will occur in 2011. While the City's five-year budget plan factors in the MVHC, it is highly unlikely that such a sizable credit will be restored given the State of Minnesota's continuing budget problems.

The statewide economic problems facing the State of Minnesota and other governmental entities also calls into

question the sustainability (and reliability) of the sizable intergovernmental revenues that the City receives. These intergovernmental revenues were \$896,000 in 2009 and \$908,000 in 2010. This \$908,000 level of intergovernmental revenues is also projected for 2011 through 2015.

The second potential negative impact on the City's revenue is that the City's rapid commercial growth is based primarily in the retail area. As the economy soured, the health of these retail entities has diminished. The City had 184 valuation petitions (the process used to establish a lower property tax value) filed against the City. These petitions represent nearly \$500 million in value. To date in 2010, there were over 220 petitions filed with a similar value. The result of these contested matters remains unknown.

The third negative impact is in residential housing. The City has diverted a building inspector (who would normally be working on new housing issues) to act as a rental inspector and to look at foreclosed homes. This has turned a revenue generating position (from new building fees) into an additional City expense. In addition, the City has had a host of home foreclosures.

The result of the citizen economic stress is that the City has been forced to make difficult policy decision to reduce its

levy to maintain a constant estimated tax rate. This rate is 29.500, which is sustainable for 2010. This, however, will result in staggering deficits in future years unless additional revenue is added or expenditures are reduced. The reduction of expenditures is more problematic given that 71% of the City's proposed budget expenditures is comprised of personnel services. The City has already eliminated five positions for 2010 and 2011.

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 Blaine Comprehensive Annual Financial Report ("Report"). This Report contains the latest audited financial condition of the City, confirmed by an independent auditor for the calendar year ending December 31, 2009.

The cost of the 1% awarded wage increase for 2010 for the entire Police Sergeants unit (assuming all Police Sergeants are at top pay) is approximately \$5,862 (exclusion of any roll-up costs). There is no cost to the Employer for health insurance for 2010, but for 2011 the cost will not exceed an additional

\$5,880 under the insurance award. Thus, the total cost of the awards for both 2010 and 2011 is approximately \$11,742 (without roll-up costs). That being established, the City's assets exceeded liabilities by \$334 million, of this amount \$49 million (unrestricted net assets) may be used to meet the City's ongoing obligations to citizens and creditors.

The City's net assets increased by \$4.2 million; over time, increases or decreases in net assets, may serve as a useful indicator of whether the financial position of the City is improving or deteriorating. The City's short-term investments of five years or less were \$46.8 million.

The City's long-term investments were \$25.4 million, totaling \$72.4 million for 2009. More importantly, the City's unreserved and undesignated General Fund balance was \$9.7 million or 43% of the total General Fund expenditures. This percentage exceeds the State Auditor's recommendation that cities adopt fund balance policies and that the amount of unreserved fund balances in the general and special revenue funds as of December 31 of each year be approximately 35 to 50 percent of fund operating revenues, or no less than five months of operating expenditures.

In addition, the 43 percent exceeds the City's informal policy, as directed under City Charter, Section 706, to provide a "safe margin" of revenue. The City has maintained an informal

policy of maintaining an unreserved fund balance of 30 percent of the upcoming year's budgeted expenditures, plus an additional 8 1/3 percent contingency fund.

The health insurance maximum financial impact for 2011 and the wage award for 2010 amount to no more than 0.025% of the City's 2009 undesignated General Fund balance, which is more than affordable to the City. Most certainly, if the City seeks to retain more revenue they have the ability to not provide a salary or insurance increase to non-union employees for 2011.

An internal comparison of employees in the political subdivision is also one of the recognized criteria in interest arbitration. Unfortunately, an internal wage pattern has not been established by the unionized groups for either 2010 or 2011. The City unilaterally implemented a 0% wage increase for non-union employees. As previously noted in the health insurance discussion, the Arbitrator is not convinced that the non-union employee group, who have no collective bargaining rights, should control the outcome of this case. Additionally, the City has a history of wage increases that are inconsistent among different groups of City employees.

The evidence establishes that the City is in compliance with the LGPEA and would even be in compliance with the LGPEA if the Union's position was sustained on all of its economic demands.

Consequently, the Arbitrator's awards, which are less costly than the Union's financial positions, would keep the City in compliance with the LGPEA.

The external market comparison is an important consideration in any interest arbitration, and is very important in this case. There are twenty settled cities for 2010 in Stanton Group 5. Nine of the twenty comparable cities provided no wage increase to their sergeants. The other eleven cities provided wage increases ranging from .0005% to 13.62%. It would appear that the 13.62% wage increase in Woodbury was an equity adjustment. The majority of cities, other than Woodbury, granted wage increases in the range of .0005% to 3.25%. Clearly, when all twenty cities are considered, a wage award of 1% for 2010 is well within the range of the cities that granted salary increases and those that granted no wage increase. There was no evidence that the cities that granted wage increases for 2010 were in better financial condition than Blaine.

The fourth and final consideration in an interest arbitration decision is economic factors (e.g., Consumer Price Index, turnover, retention rates, etc.). The CPI is used as an indicator of inflation and as an escalator for income payments. An analysis of the CPI for 2010 indicates that the cost of living has risen to 1.6%. Thus, the 1.0% wage award for 2010, along

with health insurance increase effective for 2011, will allow the Police Sergeant to keep up somewhat with inflation.

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 Police Sergeants based upon their wage and fringe benefit package paid to them by the City. In fact, in the past five years, the City has not experinedced any wage realted turnover in this bargaining unit. In addition, the City's most recent effort to fill a Police Sergeant's vacancy in 2008 produced 12 applicants even when it limited the applicants to internal candidates.

**ISSUE FIVE: OVERTIME - ADDITION OF COMP
TIME LANGUAGE - ARTICLE 14.2**

POSITION OF THE PARTIES

The existing contract language in Article 14.2 provides the following:

OVERTIME PAY

Employees will be paid at the rate of one and one-half (1 1/2) times the employee's base pay rate for all overtime hours worked.

The City's position is to maintain the current contract language in Article 14.2.

The Union is proposing the following addition to Article 14.2:

OVERTIME PAY

Employees will be paid at the rate of one and one-half (1 1/2) times the employee's base pay rate for all overtime hours worked. The employee may chose to take compensatory time in lieu of overtime pay at one and one-half (1 1/2) hours for every hour of overtime worked.

AWARD

Maintain the current contract language in Article 14.2.

RATIONALE

It is axiomatic in interest arbitration that a party proposing a change in existing contract language shall bear the burden of proof in establishing that there is a substantial problem with this language and its proposed change is necessary and reasonable and will effectively and efficiently resolve the problem. Thus, the party proposing to change the existing language bears the burden of showing the need for the change or a "quid pro quo" for the change. In the present case, the Union has not offered any trade for this enhanced benefit. Accordingly, the issue is whether there is a "need" for this enhanced benefit.

While the Union points out that sixteen out of the twenty-five cities in the comparable group have compensatory time in their contracts, the Union has not established a need for their proposed additional language. The Parties have operated successfully for a number of years without the requested

language. Internal equity does not support this language. The group most closely resembling the Police Sergeants are the Police Officers. The Police Officers do not have this requested language in their agreement. The requested language is also not present in the Public Works contract.

The Union claims that the additional language will save the City money. In theory, the Union may be correct if a Police Sergeant takes compensatory time off and is not replaced by another Police Sergeant on overtime. However, there is no guarantee that this will always occur.

There are only seven Police Sergeants in the City. As a result, the Union's requested language could operate to seriously impair management's right to schedule. In the event that a Police Sergeant had the right to take off compensatory time when he chose to do so, the City would either have to pay overtime to another Police Sergeant to fill the shift or to have the shift remain unfilled. This latter option is not realistic given some shifts and the demands on the City. Such a provision also has the potential to be particularly expensive in the event that an individual earning overtime must fill in for the Police Sergeant taking compensatory time off.

Such an employee driven benefit would also conflict with sick leave, vacation and other leave days. This language is

particularly unworkable in a small bargaining unit like the present with seven Police Sergeants.

ISSUE SEVEN: CALL BACK - INCREASE CALL BACK TIME - ARTICLE 17

POSITION OF THE PARTIES

The Employer is proposing no change to current contract language in Article 17 as follows:

An employee who is called to duty during the employee's scheduled off-duty time shall receive a minimum of two (2) hours' pay at one and one-half (1 1/2) times the employee's base rate of pay. An extension or early report to a regularly scheduled shift for duty does not qualify the employee for the two (2) hour minimum.

The Union proposes the following contract language in Article 17:

An employee who is called to duty during the employee's scheduled off-duty time shall receive a minimum of three (3) hours pay at one and one-half (1 1/2) times the employee's base rate of pay. An extension or early report to a regularly scheduled shift for Court appearance does not qualify the employee for the three (3) hour minimum.

AWARD

There shall be no change to current contract language in Article 17.

RATIONALE

As previously noted, the Union bears the burden to establish the need for this change. As an initial matter, the Arbitrator has noted that the call back minimum is not simply two hours - it is two hours at time and one-half. In other words, this minimum

payment is three hours. This is an important distinction in that the call back language of other contracts may or may not be based on overtime rates.

The Union is proposing this change to the contract based on the external market for call back time. Of the cities in the comparable group, those that offer call back time, offer an average of 2.5 hours, closer to the Union's position of 3 hours. However, there are ten of the twenty-five comparable cities that do not offer any call back time. The City of Minnetonka appears to have no minimum call back time, nine cities have the same two hour minimum as currently exists in Blaine, two cities have a two and one-half hour minimum and six have the benefit requested by the Union.

As a matter of internal equity, Police Officers do receive a minimum payment at three hours and this payment is at time and one-half. Nevertheless, this is a benefit that was negotiated into the agreement by the Police Officer and the City through the give and take of collective bargaining. In contrast, the Public Works collective bargaining agreement contains the same two hours at time and one-half currently enjoyed by the Police Sergeants. Accordingly, there is no clear and concise internal practice with regard to call back time among the other unionized groups in the City.

The Parties are to be complimented on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written hearing briefs.



Richard John Miller

Dated December 30, 2010, at Maple Grove, Minnesota.