

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

Interest Arbitration

**THE INTERNATIONAL ASSOCIATION
of FIREFIGHTERS, LOCAL NO. 101**

-and-

B.M.S. Case No. 09PN1040

**THE CITY of DULUTH
DULUTH, MINNESOTA**

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

Representation-

For the Union: Erik Simonson, President
Clint Reff, Vice President

For the City: Lisa D. Wilson, Asst. City Attorney
Kim Hall, Human Resources Mgr.

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"), certified a single issue at impasse in connection with the parties' (new) 2010 Collective Bargaining Agreement, on July 21, 2010. 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 on October 19, 2010, that he had been selected as the impartial arbitrator to hear evidence and arguments concerning the outstanding issue, and to render an award. A hearing was convened on February 2, 2011, in Duluth. Following receipt of position statements, testimony and supportive documentation, the parties indicated a preference for submitting written summary arguments. They were received on March 5, 2011, and thereafter the hearing was deemed closed.¹

Preliminary Statement-

This matter arises from an impasse that has been certified by the Bureau of Mediation Services in 2010, between the International Association of Firefighters, Local 101 (hereafter "Union," or "Local") which represents approximately one hundred and thirty (130) fire fighters, captains, inspectors, fire marshals and assistant fire chiefs working for the City of Duluth, Minnesota ("City," "Employer," or "Administration").

In 2007, the parties reached an accord over a (then) new collective bargaining agreement which called for a change in their approach to

¹ At the end of the hearing, the parties agreed to waive the thirty day time limit for submission of the final Opinion & Award.

retirement health care, moving from a defined benefit plan to a defined contribution plan. More particularly, as it pertains the instant dispute, those members of all bargaining units in the City who were hired prior to the end of 2006, were eligible for a one time deposit of \$12,000 into a post-employment health care savings plan account, known as the Minnesota Health Care Savings Plan ("Plan"), which was administered by the Minnesota State Retirement System. While the other four unions accepted the designation of the monies, the Firefighters Local chose to split the \$12,000 in half, electing to designate \$6,000 for the qualified retirees from their bargaining unit, and the remaining \$6,000 to the new-hires who started working for the City in 2007 or later. It was explained that the reason behind this decision was because those hired after January 1, 2007, would be at a disadvantage as they would be unable to save a sufficient amount of money for their health care after retirement. While they could elect to enroll in the same medical plan as those who were hired prior to that date, they would get no contribution from the City if they did so.

In light of the disparity between the more senior firefighting personnel and their fellow bargaining unit members hired after 2006, the Union approached the bargaining table for the new (2010) contract, seeking to bring the future retirement benefits of its newer members in line with those

who had earned greater longevity. Accordingly, they proposed an increase in the amount of the Employer's monthly payment into a qualified employee's health care savings plan account (the Minnesota Health Care Plan) for the twenty-six bargaining unit members that the Union believes would be effected.

The Employer, on the other hand, sought to decrease the contribution. When the parties were unable to resolve the matter through bargaining and thereafter, mediation, the matter was certified for binding arbitration for resolution.

The Issue-

Whether the City's contribution for full-time and permanent employees in the Fire Department who are members of Local 101, be increased for the term of the new Contract?

Position of the Parties-

The **UNION** seeks an increase in the City's monthly contribution into the post retirement health care plan of those employees hired after 2007, from the current 1¼% to 2% of his/her basic monthly pay.

The **CITY**, counters by offering a continuation of the existing benefit

as it is now set forth in Article 19.4(d) whereby the eligible employees hired in 2007 or later, would receive a contribution of 1¼% each month for the term of the new Master Agreement.²

Analysis of the Evidence:

In arriving at what is believed to be a fair and reasoned decision concerning the issue that has been certified at impasse, I have given careful consideration to the applicable provisions of PELRA which requires the reviewing neutral to examine such factors as the obligations of public employers in this state to efficiently manage and conduct their operations within the legal limitations specified, the interest and welfare of the public they serve, the ability of the City to fund any increase in contribution, the effect of the respective proposals on the standard of services provided, as well as the ramifications any award might have in connection with other classifications of employees, and finally the power of the City to levy taxes and appropriate funds for the conduct of its

² At the commencement of the proceedings, the City revised their final position, dropping their demand for a reduction in the contribution formula equal to 1% of a bargaining unit member's basic monthly pay, and substituting the "status quo," which retains the 1¼% formula.

operation.

A review of the evidence demonstrates that there are a number of prominent facts that have been established which bear directly upon the outcome of this dispute. The record shows that since 2005, the Employer has experienced ever-increasing costs in connection with the retiree health care contributions made to the five separate bargaining units per their respective contracts. When the 2007-2009 negotiations commenced with the organized employees, the City was facing a \$300+ million dollar unfunded liability for the retiree health care benefit. Consequently, all five of the unions, and the Administration faced a daunting task as they entered into bargaining at that time in an attempt to correct the problem. As previously noted, through negotiations, each of the recognized representatives of the employees – including the Firefighters - made considerable concessions which resulted in the establishment of a single Health Care Savings Plan. This included the one-time lump sum contribution for new hires by the Employer for those Firefighters hired after January 1, 2007, and who completed a one year probationary period, to help offset costs attendant to health care coverage, upon their retirement.

It was further demonstrated without challenge, that the Local

opted to divide equally the agreed upon contribution of \$12,000 between new hires and those who elected to retire prior to the end of the calendar year 2009.

Neither is there any dispute regarding the financial difficulties facing the City of Duluth as a consequence of the dramatic downturn in the economy since 2008. The Union has not questioned the fact that the Employer, along with most other governmental entities throughout the State of Minnesota and the rest of the country as well, has been experiencing genuine economic challenges the likes of which have not been seen for decades. Indeed, a cogent argument can be made that the breadth and severity of the problem has been so extreme as to nearly blur the line between recession and depression.³

The evidence further establishes the fact that the City has reached voluntary settlements with all of the other bargaining units calling for no increase in wages, step progression and longevity.⁴ The Local has also reached a tentative agreement which provides for no increase in wages for the term of the 2010 contract (Local's Ex. 21).

Additionally, under the terms of the old and new collective

³ The national economic experience over the past three years has come to be known as the "Great Recession."

⁴ The Employer does however continue to honor all step and longevity eligibility for 2010.

bargaining agreements with the Union, the City contributes 1¼% of an eligible employee's monthly base salary to the established health care savings plan for fulltime and permanent employees hired after January 1, 2007, (Employer's Ex. 1; Article 19.4). This is ¼% higher than the contribution the Administration makes for new hires belonging to the remaining four bargaining units in the City. Members of the Firefighter's Local also are able to fund their health care savings plan account through the conversion of vacation time earned (*id.*).

Finally, it has been shown that there is no agreed-upon collection of other municipalities in the state which might otherwise constitute an external market for analysis, and no real history of using any particular grouping for gauging the reasonableness of either side's position at the bargaining table. Moreover, the parties are essentially in accord that the issue under review here is less one of external comparables and more one of internal similarities.

These facts then serve as a relevant backdrop to be taken into consideration when examining the final positions and supportive arguments proffered by each side to this dispute.

The Union asserts that notwithstanding the distressed economy and the City's assertion that they are facing reduced revenues in the

face of ever-increasing costs, an implementation of their final position would not adversely impact the Employer's bottom line. The cost of increasing the contribution for new hires into the Plan is estimated to total less than \$10,000 for approximately twenty-six of its members (Union's Exs. 17 & 18). The Local posits that this is a minimal amount when compared to the overall general fund which approximated some \$75 million in 2010. They further contend that the cost of their proposal is significantly less than the cost of longevity pay extended to the ten assistant city attorneys who recently became part of the supervisory bargaining unit in Duluth, and the action taken by the City Council authorizing expenditures of a far greater amount to secure the services of outside counsel to assist in the negotiations process with the five separate bargaining units. When considered together, the Union maintains the Employer's actions appear to be counterproductive to their ability to pay argument.

The City counters that retention of outside counsel is not a term and condition of employment which the Union may bargain over, much less dictate to management who will serve on their negotiating committee. This argument however, misses the thrust of the Local's argument that other employment-related costs incurred by the

Administration pale in comparison to the relatively small amount of expenditure it would take to fund their position.

While I would concur with the Union that the amount of money necessary to fund their proposal in 2010 is relatively small, it does not however constitute compelling evidence sufficient to award the increase in the benefit they seek. A number of essentially uncontested facts placed into evidence support this decision.

Although the initial cost of the Local's proposal is nominal when considered in light of the Employer's approved budget for 2010, it is not a one-time non-recurring expense that is being sought. As the Administration points out, an award of the Union's proposal would result in a cost approximating \$292,500 over the course of a new hire's career with the city factoring in the new hire's salary increases over time, and the greater amount of Firefighters eligible for the improved benefit who replace those who retire (City's Ex. 25). The Union's argument is based more on a snapshot in time rather than a consideration of future costs that would most certainly be incurred.

Of no little influence in the decision reached here is the testimony offered by the Union's Vice President, Clint Reff who was a member of the Local's Executive Board for the past thirteen years and participated

in the 2007-09 bargaining as a representative of the Union. Under cross-examination, he acknowledged that the additional contribution of ¼ % of base salary for new hires into the Fire Department established in the prior contract negotiations – and continued in 2010 – constitute an “offset” to the decision to divide the one-time lump sum amount between the new hires and those who were retiring by the end of 2009, and was not extended to any of the other bargaining units. The admission exposes the infirmity of the Union’s reasoning and it supportive of the Administration’s argument that what the Local seeks here is an additional exception to what other internal bargaining units have already agreed to.⁵

The record demonstrates that health care savings plan adopted in the prior agreement, was proposed by the Union as a means of best addressing the issue of retiree health care funding and coverage. Upon agreement with management that a one-time sum of \$12,000 would be offered to the new hires, the Local made a decision internally to divide that amount in half giving \$6,000 to those members who elected to

⁵While the Employer’s initial “final” position certified at impasse by the Bureau was to eliminate the additional ¼% contribution, as noted previously, they subsequently altered their stance seeking to retain the status quo relative to the contribution level for members of Local 101.

retire prior to the end of 2009. The Local maintains that the move was necessary to gain ratification of the 2007-2009 contract by its membership. While this is understandable, I must also take into consideration the testimony of Mr. Reff who acknowledged that the Local understood the risk associated with its decision and the fact there was no guarantee going forward that the new hires would recover the difference.

Noteworthy too, is the experience of the AFSCME bargaining unit relative to this issue. Like the other organized units in the City, they were offered the \$12,000 one time lump sum contribution for the retirees whom they represented. Subsequently, they also elected to split that amount in two, giving half of it to the new hires after five years with the City, and designating the remaining portion for those who retired prior to December 15, 2009 (Union's Ex. 33; Employer's Ex. 10).⁶ For the year 2010 however, the AFSCME unit settled, along with the other three unions, with no general wage increase and the continuation of the 1% contribution formula into the Plan (Union's Ex. 34; City's Ex. 11).⁷ An

⁶ All employee groups also received an employer contribution of 1% of base pay except the Firefighters who received 1¼%.

⁷ In 2010, AFSCME sought an additional \$6,000 contribution for its new hires, but the proposal was rejected (testimony of the City's Chief Administration Officer, Dave Montgomery). As Union witness Reff acknowledged in his testimony, what AFSCME and the Employer agreed to in 2010, is identical to what the City is offering the Local here.

adoption of the status quo position for the Firefighters however, will continue the obligation of the Administration to contribute 1¼% of their monthly base salary toward the benefit.

The Local argues that when the additional ¼% that its newly hired members receive is coupled with the reduced lump sum contribution, the result is still less than the total deposits over an average career that a similarly situated member of the police bargaining unit would acquire. As already noted, the police union opted for the entire \$12,000 amount to be reserved for the new retirees. This argument however ignores the fact that the decision to split the amount was made by the Local alone; that Firefighters hired after January 1, 2007, are eligible for the benefit after twelve months probation, which is considerably sooner than the other bargaining units in the City, and; that they have also negotiated a provision which allows all members to fund in part their health care savings plan account through the conversion of vacation time (Administration's Ex. 1; Article 24).

The City asserts that the voluntary settlements reached with the other four bargaining units constitutes a consistent pattern, which should control the outcome of this dispute. The Local counters that a closer examination of the other settlements demonstrates there is in fact no

such pattern of consistency with respect to “status quo.” They point to the addition of the ten assistant city attorneys who joined the supervisory unit last year and promptly negotiated a step program for longevity pay with the Employer. The Local further notes that AFSCME negotiated a change to their agreement which diminished the Administration’s right to reduce annual costs by implementing mandatory furloughs, thereby losing the ability to save money, as well as a policy change in the Police Department that affected overtime pay for its organized employees (Union’s Ex. 10).

A review of these changes however, does not convince me that the Employer’s claim of consistency is disingenuous. Initially, it is observed that an award of the Union’s position here would mean that the rate of contribution from the Employer for new hires would be double that of any of the other bargaining units. Further, as previously noted each of the other unions have settled their respective agreements with the City for one year with no general wage increase and a continuation of the existing employer defined contribution benefit level for new hires (Employer’s Ex. 11).⁸ While the Local accurately references the experience of the supervisory union relative to the

⁸ Moreover, there was no increase in benefits for any of the other bargaining units.

assistant city attorneys, a closer examination of what occurred reveals it was more an application of an existing benefit to new members of that bargaining unit, than any increase in the benefit. Indeed, the parties agreed to stagger the longevity pay for the newly acquired members over a four year period in recognition of the Employer's distressed financial condition (testimony of Assistant City Attorney, Allison Lutterman).

The change in the AFSCME agreement for 2010, according to the testimony of the Employer's Budget Manager Peggy Spehar, did not save the City money. Absent additional evidence relative to this allegation by the Local, and in light of the negotiations experience between AFSCME and the Employer for their current contract, I find insufficient evidence of desperate treatment between the two locals. Finally, the 2010 bargaining involving the police and the confidential employee unit and the Administration, fails to adequately establish an increase in costs to the Employer within the purview of their respective agreements.

While not of paramount importance, I have also taken into consideration the external market in the course of this analysis. While the evidence submitted is limited, City's Exhibits 26 and 27, as well as the

testimony of H. R. Generalist Cliff Tanner for the Employer, demonstrate that among the similarly sized cities surveyed in the state few, if any, with a full-time fire department, provide contributions to a health care plan for retirees.⁹

Award-

This impasse dispute is unique to the extent that the resolution of the issue does not hinge so much on its cost as is does on other (established) facts. They include the strong pattern of internal settlements for the contract year 2010 made between the Employer and all other bargaining units in the City of Duluth, the additional ¼% contribution level the Firefighters already receive, the internal decision by the Union to divide the initial lump sum contribution for new hires with those who would retire prior to the end of 2009, external market experience with the same issue, and the Employer's very distressed financial position.

While it is most certainly understandable that the Union wishes to improve the monies available to new hires to fund their retirement

⁹ As the Union points out, of the twelve employers contacted by the Employer, only four were cities, the rest being county governmental units who do not employ full-time firefighters.

health care plan, given the evidence presented in connection with this dispute, I must conclude that the issue is best left to the bargaining process involving future contracts. It is a well-settled principal that the arbitrator, in an interest arbitration setting such as this, should be committed to producing a contract which the parties themselves might well have negotiated in the absence of the circumstances which led to the exhaustion of their traditional remedies. The plain weight of the evidence in this instance indicates that the most reasonable settlement of the parties' 2010 collective bargaining agreement would, and should, include the City's final position on the certified issue of contributions to the post retirement health care plan which maintains the existing benefit level. On balance, I find it to be fair, competitive, and internally consistent resulting in a sustainable benefit for Firefighters hired after January 1, 2007. It is therefore awarded.

Respectfully submitted this 6th day of April, 2011.

/s/
Jay C. Fogelberg, Neutral Arbitrator