

IN THE MATTER OF ARBITRATION BETWEEN

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Minnesota Teamsters Public and Law Enforcement  
Employees' Union Local 320,  
Union,

and

City of Brooklyn Park, Minnesota,  
Employer or City.

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OPINION AND AWARD

Interest Arbitration  
BMS Case No. 10-PN-0934

Police Supervisors Unit

ARBITRATOR:

Gerald E. Wallin, Esq.

DATE OF AWARD:

June 8, 2011

HEARING SITE:

Brooklyn Park, Minnesota

HEARING DATES:

April 28, 2011

RECORD CLOSED/BRIEFS RECEIVED:

May 13, 2011

REPRESENTING THE UNION:

Ms. Paula R. Johnston  
General Counsel  
Teamsters Local No. 320  
3001 University Avenue S. E.  
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REPRESENTING THE EMPLOYER:

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## **JURISDICTION**

The hearing in this matter was held on April 28, 2011. The undersigned was selected to serve as interest arbitrator pursuant to Minnesota law and the procedures of the Minnesota Bureau of Mediation Services. The Commissioner of the Bureau certified ten issues to be at impasse for interest arbitration pursuant to Minn. Stats. §179A.16, Subd. 2. At the hearing, the parties announced that most of the issues had been resolved via matching language of their respective final offers. Only wage issues survived for interest arbitration.

Both parties were afforded a full and fair opportunity to present their evidence pertaining to the wage impasse issues. Witnesses were sworn and their testimony was subject to cross-examination. The parties submitted post-hearing briefs, duly received on May 13, 2011, which closed the record, and the matter was taken under advisement.

## **ISSUES**

According to the submissions of the parties, the following are the issues remaining for interest arbitration:

1. Wages for 2010.
2. Wages for 2011.
3. Step movement for 2011.
4. Extension of Market Adjustment provisions.

## **BACKGROUND**

The Employer City of Brooklyn Park, Minnesota is a second-tier suburb of Minneapolis located in northeast Hennepin County. It is bounded by the cities of Maple Grove, Osseo, Champlin, Brooklyn Center, Crystal and New Hope. The estimated current population of 75,156 for 2009 makes the Employer the fourth largest city in the Twin Cities metropolitan area and the sixth largest in the State of Minnesota. It provides services to an area of approximately 27 square miles.

The City employs a total workforce of 351 employees that are organized into four different bargaining units and there is one non-represented group. The instant Police Supervisors unit has 21 members making it the smallest of the four bargaining units. The unit consists of the classification titles of Inspector, Lieutenant, Sergeant, Crime Prevention Coordinator, Support Services Manager,

and CSO Supervisor.

The parties' most recent previous labor agreement covered the years 2007 through 2009. The provisions of that agreement identified a number of cities that would constitute an external comparison group for assessing the market for wages. That agreement also included a set of provisions for making interim market adjustments to wages between the effective dates of negotiated general wage scale increases. Whether that market adjustment language should be eliminated or continued is one of the impasses issues.

Both parties presented extensive evidence about the financial condition of the Employer, the current economic climate affecting the Employer, the prognosis for that climate, and wage information for externally comparable cities. As noted, both parties summarized the merits of their respective positions on the impasse issues by means of comprehensive post-hearing briefs. All of the material has been thoroughly reviewed.

One noteworthy evidentiary dispute arose during the hearing. The parties reached a tentative agreement in mediation in 2010 but it did not ratify. Interest arbitration was originally scheduled to be held on January 20, 2011 but was postponed when the parties apparently developed another tentative agreement. It evidently met the same fate as the previous mediated tentative agreement. At arbitration, the Employer sought to introduce the initial mediated tentative agreement for the purpose of establishing where the parties at one time determined the merits to lie on the issues in dispute. The Union objected to the relevance and propriety of the proposed exhibit. The undersigned admitted the exhibit with the caution that it might not be given any weight. What changes, if any, to the impasse issues may have subsequently been made in the January tentative agreement were not identified in the record. Because of the uncertainty existing between the terms of the mediated and January tentative agreements, the undersigned has given no weight to the Employer's exhibit.

The respective positions of the parties are as follows:

#### **Wages for 2010**

##### Union Position

Effective January 1, 2010, the wage scale shall be increased by 1.5%. Step increases shall be permitted.

Employer Position      There shall be no wage scale increases for 2010. Step increases shall be permitted.

**Wages for 2011**

Union Position      Effective January 1, 2011, the wage scale shall be increased by 1.5%. Step increases shall be permitted.

Employer Position      There shall be no wage scale increases or step increases for 2011.

**Market Adjustment Provisions**

Union Position      Such provisions should be carried forward into the new 2-year agreement.

Employer Position      Such provisions should be eliminated.

**OPINION AND AWARDS**

Contemporary interest arbitration awards in Minnesota have tended to coalesce around four primary areas of consideration to resolve impasse issues when bargaining parties have failed to reach their own agreements. These considerations may be described as the employer's ability to pay, internal consistency, the comparison of the Employer's position with the external market, and other relevant factors such as cost of living, recruiting & retention problems, and the like. Since the emergence of the economic storm clouds across the State of Minnesota as well as the nation in 2007-2008, the relative significance of these four areas of consideration has changed. Because the economic headwinds have not affected all local units of government uniformly, the general impact of external market comparisons has diminished somewhat. And because the economic downturn has tended to adversely affect all local units of government to some significant degree, the analysis of an employer's ability to pay has risen in priority and can no longer be taken as a given for the foreseeable future.

## The Wage Issues

Step increases were permitted for 2010 and are no longer part of the impasse. As previously noted, the Union's position seeks across-the-board increases of 1.5% to the wage scales for both 2010 and 2011. In addition, it seeks step increases in 2011 for all eligible members of the bargaining unit. The Employer's position is to provide no increases to the wage scales in either 2010 or 2011 and to restrict all step increases that would otherwise occur in 2011.

The Union contends that the Employer experienced favorable financial trend performance in the previous six fiscal years and had unrestricted net assets of some \$96 million as of the end of 2009. As such, it maintains that the Employer has the ability to pay the increases sought by this small bargaining unit. Indeed, the cost of permitted step increases for 2011 is projected to be only \$28,725, which would appear to be well within the scope of the unrestricted assets. The Union describes its position as seeking only "modest" increases that keep the unit in line with the external comparable cities.

In a different economic climate, the Union's objectives would not be seen to be unreasonable. The reality is that while the years 2004-2008 reflected generally favorable financial trends, 2009 saw an abrupt and severe reversal of direction. Unfortunately, at the present time, the Employer's evidence shows the Union's objectives are, as a practical matter, unaffordable. The following discussion explains the factors that are unique to Brooklyn Park that drive this conclusion.

The economic downturn that began in the 2007-2008 time frame eventually caused the State of Minnesota to withhold aid payments that were already built into city budgets. That and other negative economic projections led the Employer to undertake measures to cover the looming revenue deficits. It shifted fund balances where it could, implemented organizational restructuring to save costs where appropriate, identified cost reduction opportunities, and explored staffing reductions. In this latter regard, it pursued an early retirement policy as well as an unpaid leave of absence program. These measures were essentially of a "one-time" character that could not be repeated with the same success to deal with further revenue shortfalls.

But those shortfalls have persisted and worsened. In significant respects, the worsening has adversely affected the Employer to a greater degree than its neighboring cities.

The Employer relies on property taxes for approximately 75% of its general fund revenues. This is the fund from which employee pay and benefits are drawn. The Employer's fund balances

are already slightly below the lower limit of the percentage range recommended by the State Auditor's office for meeting cash flow obligations. All five of the cities within the parties' negotiated external comparison list that are shown in Employer's Exhibit 14 have general fund reserve balances safely within the Auditor's recommended percentage range.

The Employer's residential tax base has eroded by 37% since 2007. This is the largest percentage decline of all cities with populations of more than 50,000. It is nearly 10% greater than the decline experienced by the next closest City of Burnsville. The market value of the median-value home has steadily and significantly declined from \$228K in 2008 to \$198K in 2009 to \$175.2K in 2010. According to information provided by Hennepin County, the median-value home has fallen by another 11.6% for 2011. Thus, the bottom has fallen out of the housing market on which the Employer's primary revenue stream is calculated.

The evidence also shows that the precipitous decline in the tax base cannot be overcome by raising levy rates. The demographics of the Employer's residents make it a predominantly working-class populace. Approximately 9½% are below the poverty level. Per capita personal income is well below the averages for Hennepin County as well as the 13-county metropolitan area. Not surprisingly, the City has experienced the highest number of housing foreclosures among the 18 Hennepin County cities shown in Employer Exhibit 19. The City also has the highest percentage of homes in foreclosure. The number of foreclosures is more than double the number seen by any of the other cities. The depressing effect of these foreclosures on housing values is clear.

What is noticeably absent from the record is any evidence whatsoever to indicate that the decline in housing values is approaching a bottom. As a result, it is evident that the Employer has not yet seen the worst of the erosion of its primary source of revenue.

In addition to the erosion of the tax base, the economic downturn has prompted commercial property owners to challenge their assessments. The Employer faces the loss of some \$400K in tax revenues annually from these challenges.

The Employer's two other revenue streams have also been adversely impacted by the economic downturn. Its permit fees have fallen by more than 50% since 2007. Its actual permit revenue for 2010 was only some 76% of the budgeted expectation and created a shortfall of nearly \$300K. The evidence shows that the City has also seen a significant reduction of its general fund

investment income. It is down by more than 50% from 2007. The actual return for 2010 also created a shortfall from the budgeted expectation.

The testimony of the Employer's Finance Director provided a telling piece of evidence to put things in perspective. According to his testimony, while the size of the Employer's unrestricted net assets might appear robust on the surface, virtually all of it will be needed to meet existing cash flow requirements. Indeed, only approximately \$11,000 is truly unrestricted by cash flow needs. This amount of unfettered funds is wholly eclipsed by more than double by the \$28,000 requirement that would be needed to pay for step increases alone in 2011.

Moreover, there is an internal consistency factor that must not be overlooked. The non-represented employees of the City and two of its bargaining units, covering public works and police clerical employees, have already accepted a wage scale freeze for both 2010 and 2011 as well as a one-year step increase freeze. This mirrors the Employer's wage position at impasse here. If the instant bargaining unit is awarded gains that the other groups did not receive, the likelihood of an adverse impact on employee morale is evident. And the cost of extending the step increase to all employees on a "me-too" basis would increase the Employer's expenses by more than \$400K.

Finally, while the Union's position would provide its unit members with a better standing among their peers in the external comparison cities, the ranking that would flow from the Employer's position is still respectable.

On balance, therefore, the finding must be that the Employer does not have the ability to pay for the Union's objectives at the present time.

### **AWARD on the Wage Issues**

For the foregoing reasons, the Employer's position on wage and step increases is Awarded.

#### The Market Adjustment language issue

As previously noted, Sections 31.3 and 31.5 of the parties' 2007-2009 agreement provided a mechanism for annually adjusting the wage scales as of July 1 of each calendar year. In summary, the provisions identified ten cities from which the top 7 or 8, depending upon the classifications involved, would be used for purposes of calculating an average wage for the respective classification. An upward adjustment toward that average, if warranted, could fluctuate between 0% and a 2%

maximum in any year.

In the Employer's view, the operation of the market adjustment language, as explicitly stated therein, is limited to the years 2007-2009. Accordingly, it should be deleted from the new agreement. The Union, however, maintains that it is bargained language and should be carried forward into the new agreement to be applied as before.

Evidence in the record shows that market adjustments have been made to the wage scales of this bargaining unit as far back as 2004. That suggests that comparable market adjustment language was included in at least the two prior labor agreements. That history suggests that the reference to the years 2007, 2008, and 2009 in the prior agreement was for the purpose of clarifying that the adjustment would operate in all three years and was not intended to show that it should be excluded from successor agreements. If this conclusion is not correct, the parties will soon be able to address the content of a new labor agreement for 2012 and beyond if they have not already begun to do so.

It follows that the existing market adjustment language should continue to be a part of the 2010-2011 agreement subject to a limitation. Consistent with our determination of the wage issues, the operation of the market adjustment language should be suspended from making any increases to the wage scales during the term of the agreement. It is left to the parties to determine how that limitation should be expressed in the agreement.

**AWARD on the Market Adjustment language issue**

The Union's position is awarded subject to the limitation described in the Opinion.

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Gerald E. Wallin, Esq.  
Arbitrator  
June 8, 2011