

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

GENERAL DRIVERS, DAIRY EMPLOYEES WAREHOUSEMEN, HELPERS AND INSIDE EMPLOYEES LOCAL NO. 346 Union		OPINION AND AWARD
		Interest Arbitration
		Wage Reopener
and		BMS Case No. 11 PN 0635
CITY OF BRAINERD MINNESOTA City/Employer		
		Award Dated August 2, 2011
Date and Place of Hearing:		July 14, 2011 Offices of the City Brainerd, Minnesota
Date of Receipt of Post Hearing Documents:		July 28, 2011

APPEARANCES

For the Union:	Timothy W. Andrew, Esq. Andrew & Bransky, P.A. 302 West Superior Street, Suite 300 Duluth, MN 55802-5125
For the City:	Thomas A. Fitzpatrick, Esq. Brainerd City Attorney 411 Front Street P.O. Box 367 Brainerd, MN 56401

ISSUES

The following issues were certified to arbitration by the Commissioner of the Minnesota Bureau of Mediation Services on March 23, 2011:

1. Wages 2010 – Wage Re-Opener for 2010 – Article 12
2. Wages 2011 – Wage Re-Opener for 2011 – Article 12

JURISDICTION

The General Drivers, Dairy Employees, Warehousemen and Inside Employees Local Union No. 346 [Hereinafter the Union] is the exclusive bargaining representative, pursuant to Minn. Stat. 179A.03, subdivision 8 for sworn police officers employed by the City who hold the rank of Captain and Sergeant. Those employees are essential employees as defined in Minn. Stat. 179A.03, subdivision 7. At the time of the hearing in this matter the position of Captain was not filled and there were four (4) Sergeants in the bargaining unit. The City is a municipal corporation incorporated under Minnesota Statutes. The City and Union [hereinafter the “parties”] have maintained a collective bargaining relationship for many years.

On September 9, 2009 the parties entered into a collective bargaining agreement for the period of January 1, 2009 through December 31, 2011. That agreement provides at Article 12 for wages to be paid to the employees covered by the agreement. In the 2009 agreement the parties agreed to a wage freeze for 2009 and a wage reopener for 2010 and 2011. The relevant contract language reads as follows:

Article 12 – Wages

12.1 Effective January 1, 2009, wage freeze for annual increase, but not to include longevity, anniversary steps.

Effective January 1, 2010, wage reopener.

Effective January 1, 2011, wage reopener.

(Note: Should the City of Brainerd reach a settlement with another public entity to include non-represented employees, through collective bargaining (including mediation or arbitration) this shall trigger a re-opener to allow the Union to negotiate wages for the Sergeants).

RATE

Per Month

Per Hour

Effective January 1, 2009:

Captain	\$5,686.13	\$32.81
Police Sergeant	\$4,962.86	\$28.63

New Promotion: New promotion shall be paid at 100% of the appropriate wage scale.

* * * *

The police officers below the rank of Sergeant who are employed by the City are represented by a different union: Law Enforcement Labor Services [LELS]. In negotiating the 2009-2010 labor agreement the City and LELS were not able to reach an agreement on wages, and that issue was submitted to Arbitrator Boldt for a determination through interest arbitration. On May 2, 2010 Arbitrator Boldt awarded the police officers a three percent (3 %) increase effective January 1, 2009 and a wage reopener for 2010. Subsequently, pursuant to the 2010 wage reopener, the City and LELS agreed to a one percent (1%) increase effective on December 31, 2010. Because the one percent (1%) increase for the Police Officers became effective on December 31, 2010 the effect was that the Police Officer's negotiated wages were frozen during 2010.

The 2009-2011 Police Sergeant's contract that provided for a wage freeze during 2009 also provided for a wage reopener for that year in the event the City reached a settlement greater than a wage freeze with another union. When the Police Officer's received a three percent (3%) increase pursuant to Arbitrator Boldt's award, however, the Sergeants did not pursue a reopener for 2009. The parties reopened negotiations for the 2010 and

2011 wages for the Police Sergeants but were not able to reach an accord. The Union was seeking a three percent (3%) increase for 2010 and a one (1%) increase in 2011. For 2010 the City offered a one percent (1%) increase effective December 31, 2010 and a wage freeze for 2011. The inability of the parties to reach an accord ultimately led the Union to request the Bureau of Mediation Services to certify the issue to arbitration. Pursuant to Minn. Stat. 179A.16, subdivision 2 and Minn. R. 5510.2930 the Bureau certified the matter to conventional interest arbitration on March 23, 2011. At the request of the BMS Commissioner the parties submitted their final positions. The Union posited a three percent (3%) increase for 2010 effective January 1, 2010, and a one percent (1%) increase for 2011 effective January 1, 2011. The City proposed a one percent (1%) increase for 2010 effective December 31, 2010 and no increase for 2011.

The parties selected James L. Reynolds as the sole arbitrator from a panel supplied to them by the Bureau of Mediation Services to hear and decide the matter. A hearing was held on July 14, 2010 at the offices of the City in Brainerd, Minnesota. The parties requested that the record in this matter be held open for the purpose of submitting additional exhibits in support of their cases. Those exhibits were received by the Arbitrator on July 28, 2011, whereupon the record was considered closed.

There was discussion at the hearing as to whether or not any retroactive pay awarded by the Arbitrator would apply to those employees who retired or were promoted during the pendency of this case. It was agreed by the parties that retroactive pay awarded hereby, if any, would apply to those retired or promoted employees.

Position of the Parties

Issue: Wages 2010 – Wage Re-Opener for 2010 – Article 12 Wages 2011 – Wage Re-Opener for 2011 – Article 12

The Union position is a three percent (3%) increase retroactive to January 1, 2010 and a one percent (1%) increase effective January 1, 2011. The City proposes a one percent (1%) increase effective on December 31, 2010 and no increase in 2011.

Award

A three percent (3%) increase effective December 31, 2010 and a one percent (1%) increase effective January 1, 2011 is awarded.

Rationale

In interest arbitration cases arbitrators will generally consider four factors in determining an appropriate wage increase. They are the employer's ability to pay, internal comparisons, external comparisons and cost-of-living/other economic factors. These factors are not independent of one another, and the arbitrator must consider the totality of their effect in making a determination. In making that determination the arbitrator attempts to put himself in the collective position of the parties and arrive at a decision that comes close to emulating what the parties would have arrived at had bargaining continued to the point where mutual agreement was reached.

In this case the dollar effect of the wage increase granted is not large. The three percent (3%) increase effective December 31, 2010 adds nothing to the expenditures for 2010 and adds \$7,146.72 for the 2011 wage cost for all four Sergeants involved. An additional expenditure of \$2,453.76 for the four Sergeants in 2011 results from the one percent (1%)

increase effective January 1, 2011. In total these increases amount to less than \$10,000. Consideration of the City's financial condition and its ability to pay is an important factor to consider in determining wages. It is of particular importance in a period of substantial economic downturn that is now affecting the country, the State of Minnesota and the City. That said, it must be noted that the Brainerd Police Department operated in 2010 at approximately \$170,000 under its approved budget for that year. Looking to 2011 the adopted budget for that year shows an increase of approximately \$268,000 in authorized funding over that of 2010. Against such a recent budgetary history the cost of less than \$10,000 in increased wages to the Police Sergeants is deemed to be reasonable and affordable. In determining affordability, this Arbitrator looks to current approved funding and any near term surplus that may have been found in prior years. Determining funding on the basis of reserves or total assets is not appropriate in that the nature of those funds is generally illiquid and is necessary to meet State requirements or seasonal cash flow requirements.

It is recognized that the City has experienced substantial reduction in its revenue from real estate taxes and State aid. It is apparent that they have done a very credible job in reducing and controlling costs to meet the financial challenges presented. By deferring the three percent (3%) 2010 increase to December 31, 2010, any financial impact from that increase in 2010 is essentially eliminated.

As to the internal comparisons the record shows that the parties have maintained a pay relationship between Police Officers and Police Sergeants. Such a pay gap is necessary to

recognize the added responsibilities of supervisory police officers. This award will maintain that relationship, at least in the near term. It is, of course, noted that the other unions, including the LELS have not settled for 2011. Those settlements may disturb the relationship between the Police Officers and the Police Sergeants wages that has been maintained by this award. In considering the internal relationships it must be noted that all of the settled contracts for 2010 provided that the increases would be effective on December 31, 2010. This award is consistent with that timing.

As to pay equity the record shows that the City has been in compliance with the Pay Equity Act. The Police Sergeants is a male dominated class and showed in 2008 a pay differential of \$495.87 above the predicted rate. That may be a reason for concern, but it is noted that the data presented through the evidence in this case relates to the year 2008. Any changes to the mix of male and female occupied jobs since 2008 were not found in the evidence entered in this hearing. There was no evidence introduced that the wage increases proposed by either party would have any effect on the key statistic of the underpayment ratio utilized to determine conformance with the Pay Equity Act. Accordingly, it is not possible to find a basis for withholding the 2010 three percent (3%) increase made effective on December 31, 2010 due to pay equity.

As to external comparisons, the City raised concerns about the group of comparables that had been used historically to determine external pay equity. It is recognized that the group of cities used for that purpose has been utilized by the parties for some time. The evidence to change the mix of cities was not compelling. In any event, the City of

Brainerd shows up near the bottom of the list of Sergeant top rate comparisons even when the Union's proposal is brought into the data. Utilizing the Union's proposal the City would remain 5.8 percent below the average of the group. Utilizing the City's proposal the City would remain 9 percent below the average of the group. Accordingly, this award does not significantly move the City of Brainerd pay for Police Sergeants up in relative standing to the comparable group. External comparisons present no evidence that the Union's position or the award herein would create an adverse external comparison.

As to cost of living and other economic data, the City pointed to concerns raised by its citizens related to the wages and benefits of its Police Officers, including the Sergeants. That public concern and the City's reaction to it are understandable, but not controlling. The factors for consideration outlined above are the bases for determining the appropriateness of any wage adjustment.

Both parties submitted consumer price index data for 2010 for the Minneapolis-St. Paul metropolitan statistical area in support of their positions. It is noted that the CPI-U for all items was a 1.8 percent increase for 2010 over 2009. At first glance that may appear to support a lower increase than what is awarded here. The wage freeze in 2009 and the award here of a three percent (3%) increase effective December 31, 2010 and 1percent (1%) increase effective January 1, 2011 does no violence to the external standard presented by the CPI-U. Over the three years involved [2009-2011] the average increase in Police Sergeant's wages amounted to 1.33 percent. Over the two most recent years [2010 and 2011] the average increase amounted to 2.00 percent pursuant to this award. It

is noted that the award provides that the 2010 increase of three percent (3%) is effective on December 31, 2010, which means that there was no effective increase in 2010. Accordingly, the award does not conflict with external CPI data viewed over a period of time. It also must be noted, that while comparison to the CPI is useful, it is by no means the most important factor to consider in interest arbitration.

For all the above cited reasons a three percent (3%) increase effective December 31, 2010 and a one percent (1%) increase effective January 1, 2011 is awarded.

August 2, 2011

James L. Reynolds

Dated

James L. Reynolds
(Electronic signature)

Certificate of Service

I certify that on the 2nd day of August 2011, I served the foregoing interest arbitration award upon each party to this matter by mailing a copy by U.S. Mail and by e-mail to their respective addresses as follows:

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I further certify that on the 2nd day of August 2011, I submitted this award electronically to the Bureau of Mediation Services by e-mail to Carol.Clifford@state.mn.us.

August 2, 2011

James L. Reynolds

Dated

James L. Reynolds
(*Electronic signature*)