

THE MATTER OF ARBITRATION BETWEEN

Isanti County Cambridge, Minnesota “Employer”)	BMS Case No. 11PN0465
)	
)	Issue: Interest Arbitration
)	
and)	Hearing Date: 09-22-2011
)	
)	Brief Submission Date: 10-10-2011
)	
Law Enforcement Labor Services Inc.)	Award Date: 11-02-2011
Local #212)	
)	
“Union”)	Anthony R. Orman,
)	Arbitrator

JURISDICTION

The hearing in this matter was held on September 22, 2011, in Cambridge, Minnesota. The parties appeared through their designated representatives. Both parties were afforded a full and fair opportunity to present their case. Exhibits were introduced into the record. The parties stated the issues as certified by the Minnesota Bureau of Mediation Service were properly before the Arbitrator. The parties submitted their statement of the issues and final positions. Post-hearing briefs were submitted on or before October 10, 2011, and thereafter the matter was taken under advisement.

APPEARANCES

For the Union:

Nick Wetschka Business Agent

Kevin Hinrichs Business Agent

John H. McCarty Steward

For the Employer:

Susan Hansen Attorney

Kevin VanHooser County Administrator

Barb Baar Deputy County Administrator/Human Resources

George Larson County Commissioner

Alan Duff County Commissioner

I. BACKGROUND AND FACTS

On March 24, 2011, the Minnesota Bureau of Mediation Services (here in after referred to as BMS) received a written request from Law Enforcement Labor Services Inc., Local 212, (here in after referred to as the Union) to submit contract negotiations in the above-entitled matter to conventional interest arbitration.

On April 1, 2011 the BMS notified the Union and Isanti County (here in after referred to as the Employer) of a REQUEST FOR FINAL POSITIONS and CERTIFICATION TO ARBITRATION.

The issues certified were:

1. Duration – Duration of Contract – Art. 23
2. Wages – Wage Adjustment 2011 – Art. 21
3. Wages – Wage Adjustment 2012 – Art. 21
4. Steps – Step Adjustment 2011 – Art. 21
5. Furlough – Furlough Days – New

6. Insurance – Insurance Health Premiums – Art. 15

The parties were instructed to submit their final positions no later than April 18, 2011 to the BMS. In the April 1, 2011 letter from the BMS stated:

The failure of a party to submit timely final positions in a conventional arbitration matter shall be noted by the arbitrator(s) and **may be considered by the arbitrator(s) in weighing the testimony** (emphasis added), evidence, and overall good faith behavior of that party with respect to the issues in dispute.

The BMS further stated:

If issue was pursued by either party during the mediation process and remains unresolved at the time of certification, it will be listed as an issue in dispute. The Bureau does not make legal arbitrability determinations in the listing of issues. **Questions of arbitrability are determined by the arbitrator** (emphasis added).

On May 27, 2011 a representative of the Employer informed Arbitrator Orman that he had been selected by the parties to arbitrate the above-entitled matter.

On June 3, 2011 the BMS informed Arbitrator Orman that he been selected by the parties to arbitrate the above-entitled matter. Included in the letter were the April 1, 2011 letter to the parties from the BMS, the final positions of the Union and the final positions of the Employer.

After several communications by telephone and electronic mail a hearing date was set for September 22, 2011 at the Isanti County Court House in Cambridge, Minnesota.

II. THE ISSUES

A. Duration – Duration of Contract – Art. 25

- a. Union Position: The Union proposes a one year Agreement for 2011
- b. Employer Position: The County is proposing a two year agreement,
1/1/11 -12/31/12
- c. Arbitrator discussion and decision:

In the Union's brief it reaffirms the position there is not enough data to establish a two year contract. "The Union's primary concern is the lack of data to support an award for 2012. The Union presented evidence that only one of the comparable Counties has a settlement for 2012."

The Employer's brief reaffirms its position by sighting external, internal and historic patterns of bargaining. "The County's position for a two year contract effective January 1, 2011 through December 31, 2012 is supported by the internal pattern, the parties' negotiation history and the need for labor relations stability."

The Employer supports its positions in three ways. First, there is an internal pattern of two year contracts for 2011-2012 at Isanti County. The County's position for a two year contract will keep the LELS Licensed Essential unit in sync with the other bargaining units at the County, while the Union position for a one year 2011 contract will create a burdensome second cycle of bargaining at the County. The County has settled the LELS Non-Licensed unit, IUOE Local 49 Highway unit, Teamsters Local 320 Courthouse unit, and Teamsters Local 320 Family Services unit for

two year contracts effective January 1, 2011 through December 31, 2012. The AFSCME Council 65 Assistant County Attorneys unit is not settled, however, the County's position in negotiations with AFSCME is for a two agreement effective January 1, 2011 through December 31, 2012 (Employer Exhibit 36; Union Tabs 16, 17, 18 and 19). Second, the LELS Licensed Essential unit has a history of multi-year contracts. All contracts dating back to at least 1994 have been multi-year contracts (Employer Exhibit 37, Union Tab 7). The parties' bargaining history and the internal pattern of two year contracts provide clear evidence of what agreement the parties would have ultimately reached had they negotiated to a successful conclusion. Thirdly, comparison data exists by virtue of the 2011-2012 settlements at Isanti County together with the 2011-2012 Kanabec County settlement for 0.0% in 2012 and the uniform settlement pattern in Mille Lacs County for a 1.0% general wage increase for 2012 (Employer Exhibits 36 and 55 and Union Tab 9).

Both parties have sighted opposing arbitrations (Union: Arbitrator Richard Miller, City of Brainerd and Law Enforcement Labor Services, Inc. BMS Case No. 08-PN-0816 (October, 2008); Employer: Arbitrator John Flagler, County and Teamsters Local 320, BMS Case No. 93-PN-1074 (Flagler, 1993)). While this arbitrator has great respect for both sighted arbitrators he is more inclined to accept the general principle as stated by Arbitrator Flagler, "...that a brief bargaining period before the expiration of the

contract would reduce the chances for a voluntary settlement and therefore, the parties would merely recycle the same issues before another interest arbitrator the following year.” Arbitrator Miller states, “...there is limited external wage comparability for 2009 for police officers, as the majority of the comparable cities have not reached agreement with those employees.” Arbitrator Miller makes no reference to internal or historic bargaining practices. Based on the Unions statement, “...an arbitrator will need to impose a settlement using information and argument supplied by the parties...”, this Arbitrator must take into consideration the long history of multi-year contracts between the Employer and the Union, the large number of current settled multi-year contracts internally between the other bargaining units and the Employer and the two external settlements of the external comparisons agreed to by the parties.

Therefore the Arbitrator finds the preponderance of evidence is in favor of the Employer. For the above reasons the award will reflect a two year contract.

B. Wages – Wage Adjustment 2011 – Art. 21

- a. Union Position: The Union is proposing a general across the board increase of one (1%) percent for 2011.
- b. Employer Position: Effective January, 2011, the wage/salary schedule shall be increased by 0%.

c. Arbitrator discussion and decision:

In its brief the Union relies on four common considerations it used in its presentation in the hearing and adds, "...the Union would emphasize that while the County presented information about how bad the economy is and how that effects their bottom line, not once did they argue that they could not pay the additional cost of the Union's proposal. In fact, the Union presented ample evidence that money does exist to pay the additional cost." Further the Union claims the Employer's position of internal equity is faulty and states, "The County broke their pattern with the Corrections Officers/Dispatch employees' contract. This argument is heavily relied upon by arbitrators when considering a wage award and the fact that the County does not have a uniform pattern is significant." Finally the Union takes a position that the award should, "... ensure the wages of the bargaining unit maintain pace with increases in the cost of living." The Union further argues the Arbitrator should take into consideration the rising CPI and the lack of wage data from the agreed to external comparisons.

The Employer states, "Uniformity in wage settlements among all employee groups is of great importance in maintaining labor relations stability and morale, avoiding whipsaw bargaining and encouraging essential unions to engage in serious, good faith bargaining, rather than resorting time after time to the costly process of interest arbitration.

Consistency among all employee groups is of great importance in maintaining labor relations stability.” To bolster this position the Employer sights, “...the six bargaining unit at the County, voluntary negotiated settlements were reached with four of the units including LELS Non-Licensed Essential, Local 49 Highway, Teamsters 320 Courthouse and Teamsters 320 Family Services. The pattern of settlements includes a hard freeze in 2011 with a 0.0% general wage increase and no step movement and a 1.0% general wage increase and step movement in 2012. Wages were established for non-union employees identical to the pattern of settlements with the four settled bargaining units (Employer Exhibit 45). The internal settlement pattern represents 91% of the County’s total workforce (Employer Exhibit 44). Although the Employer does not present evidence that it does not have the ability to pay or that pay increases will affect its pay equity position negatively, it has provided strong evidence of its weakened financial position and potential effects of a change in pay that the male dominated unit could have in the future. The Employer wishes the Arbitrator see the Employer has maintained or exceeded the cost of living in past settlements. Inflation is stagnant in 2010 and, “...with a increasing CPI in 2011, there is no wage erosion with the County’s position for a 0.0% in 2011, a 1.0% in 2012 and no step movement in 2012 given the employees wage gains in excess of the CPI in recent years.”

As in the previous issue and this issue the Arbitrator is strongly influenced by external and internal comparisons. The Arbitrator must try to come up with a resolution that the parties may have reached themselves so the issue of economics has to be a strong influence in the deliberation of the Arbitrator.

In reviewing the settlements for the external comparisons only Chisago County provided a pay increase in 2011. Mille Lacs County had yet to settle. Providing a pay increase as requested by the Union could change the relative position of pay with the other external comparable units.

Internally all other units had settled for a zero percent increase with the exception of the AFSCME Attorney Unit, which had yet to settle.

Providing the requested pay increase to the Union would certainly change its relative pay position with respect to the other internal comparable units.

It is clear to the Arbitrator a strong pattern of settlement has been established in favor of the Employer.

The affects of reduced external revenue to the Employer and the flat CPI also have influenced the Arbitrator. The ability to pay does not create a demand to pay. The Employer has made a good case for the need for a reserve. The affect on wages by the CPI is limited. In the past the Union was has been the recipient of wage gains that have been in excess of the

CPI. For the above reasons the award will reflect a zero percent increase in wages for 2011.

C. Wages – Wage Adjustment 2012 – Art. 21

- a. Union Position: The Union is proposing a general across the board increase of one and one half (1.5%) percent for 2012.
- b. Employer Position: Effective January, 2012, the wage/salary schedule shall be increased by 1%.
- c. Arbitrator discussion and decision:
 - i. The Unions position for a wage increase in 2012 is relatively the same as its argument for 2011 with the exception the LELS Non-Licensed Unit broke the internal pattern for settlement by receiving a step increase.
 - ii. The Employer position for wage increase in 2012 is relatively the same as its argument 2011 and it responds to the Union’s argument with, “The County and LELS Non-Licensed Unit agreed to a 0.0% general wage increase in 2012 in exchange for an additional step on 7/1/12. Employer Exhibit 46. The additional step is a 2.5% step. Union Tab 19, Appendix A. Because this step was added mid-year, the 2012 costs associated with the new step are decreased to 1.25%. Approximately 59% of the unit was eligible to move to the new step on 7/1/12. Employer Exhibit 45E. Because the entire unit was not eligible to move to the new step,

this further reduces the costs associated with the new step to approximately 0.75% in 2012. This 2012 cost is less than the cost of the 1.0% general wage increase negotiated for the other bargaining units and set for non-union employees.”

- iii. In this issue the Arbitrator is more influenced by external and internal comparisons than other influences such as the revenues and CPI. This issue is more complicated.

There is limited external data. Only Kanabec County had settled for a zero percent increase in 2012. Isanti has given a one percent increase in 2012 to a majority of its units. An assumption could be made by the Arbitrator the other Counties would give an increase in 2012 after giving no increase in 2011. This assumption would be based on the Isanti settlement. What the Arbitrator cannot determine for the external comparisons is how much pay may rise based on the limited data. Therefore the Arbitrator must look to the internal comparisons.

The Arbitrator is influenced by the Union’s argument there is no long uniform pattern of bargaining. To the Arbitrator this is where it becomes complicated. The Employer takes the position the one step increase to the LELS Non-Licensed unit had a value of .75% for 2012. The Employer states, “This 2012 cost is less than the

cost of the 1.0% general wage increase negotiated for the other bargaining units and set for non-union employees.” The Arbitrator can agree with the Employer as to the calculation of the value as he used the same process in his calculations. Due to a lack of detailed information the value calculated by the Arbitrator was slightly lower. The Arbitrator is not convinced of the Employer’s position. During the hearing discussion the Employer’s position was the settlement was good for both parties. The Employer would have short term savings it needed with a delayed payment of new wages and the LELS Non-Licensed unit would make up any short fall in wages with future gains. Therefore it is clear to the Arbitrator that the future gains were considered as part of the 2012 settlement and must be consider when viewing the uniformity of the pattern of internal settlements.

For the purpose of internal comparisons the Arbitrator must view the LELS Non-Licensed Unit as the most relevant internal comparable to the LELS Licensed Unit. Both are scheduled to work 24 hour per day and seven days a week. They are both essential units. There are minimal levels of service that must be met unlike other units where work may be delayed by choice or circumstance. With this in mind the Arbitrator, using the Employers process for calculations and the Arbitrator’s limited

data source (Employer Exhibit #45E) has determined the LELS Non-Licensed Unit would receive on average per member of the bargaining unit a .64 percent increase in 2012, 1.47 percent increase in 2013 and a 1.86 percent increase in 2014. These increases are not compounding but would be added to the base wages and compounded by any other increase negotiated to those years. By adding up the value of these increases the LELS Non-Licensed would receive 3.97 percent actual cash value over the 2012, 2013 and 2014 or 1.32 percent per year. By comparing the 2012 initial calculation of the Arbitrator at .64 percent with the Employer calculation of .75 percent it appears the Arbitrator was in error (due to limited data) by 20 percent $((.75-.64)/.64)$. By applying a 20 percent correction to the calculations for 2012, 2013 and 2014 respectively the LELS Non-Licensed Unit would receive .75percent, 1.76 percent and 2.23 percent. The average per year would be 1.58 percent. In the Arbitrators opinion it is likely the Employer did make these same calculations during negotiations with the LELS Non-Licensed Unit. Although these calculations are not precise, this set of calculations lays a foundation for the Arbitrator to believe the Employer felt it would be in a more favorable position to afford pay increases in the future than in the present. This increase for LELS Non-Licensed Bargaining Unit would change the relative position of pay between the LELS Non-

Licensed Bargaining Unit and the LELS Licensed Bargaining Unit by compressing the present difference in pay. Even with the requested 1.5 percent increase by the Union for 2012 the pay rates between the units will be compressed in 2013 and 2014. The compression of the wages between the units will also relieve any pressure the Employer might have concerning pay equity with the award of increased pay for the male dominated unit. For the above reasons the award shall reflect a 1.5 percent increase for 2012.

D. Steps – Step Adjustment 2011 – Art. 21

- a. Union Position: The Union proposes no change to current contract language and the Steps should continue. .
- b. Employer Position: Furthermore, the County proposes no anniversary date increases for 2011. The Employer amended their position to reflect 2012 with a stipulation from the Union.
- c. Arbitrator discussion and decision:
 - i. The Union’s argument is simply the same as its argument for wages. The Employer can afford to pay, any savings is accomplished by taking the money away from the employees, those who units who have agreed have a majority at maximum and none of the external comparison have agreed to freeze steps.
 - ii. The Employer’s arguments are reflected in their wage position that revenues are down; there is a need to make cost savings and the

internal comparison show all of the bargaining units except the AFSCME Attorney Unit have accepted this provision.

- iii. In this issue the Arbitrator is influenced by two factors. First, the economic factor. The Employer has clearly shown all along that it is having financial problems, especially created by cuts to the State of Minnesota budget in Homestead Tax Relief and LGA. The Employer sought relief for a short period of time from its bargaining units to delay payment of a negotiated benefit, which it received in all the settled collective bargaining contracts. The Arbitrator cannot substitute his judgment as to the wisdom of such agreements as the agreements were passed by both the Unions and Employer. The agreements created a strong internal comparison. Because of the evidence shown by the Employer about its financial need and the strong internal comparisons the Arbitrator is more persuaded by the Employer in this issue.

The Arbitrator is concerned with how to make this award fair to the affected employees in this bargaining unit. If the Arbitrator accepted the Employers position the Union employees affected would be penalized more than the other bargaining units. If the steps are frozen at the 2012 rates versus the 2011 rates this bargaining unit would pay at a higher rate.. Therefore to remain consistent with the internal comparisons the award will reflect the

steps will be frozen in 2012 at the 2011 pay rates. Any difference in rates will be paid to the employee as though the employee had received the step increase. For the above reasons the award shall reflect a freeze on step increases for 2012 at the 2011 pay rate.

E. Furlough- Furlough Days – New

- a. Union Position: The Union proposes no change to current contract language.
- b. Employer Position: There shall be 24 hours of furlough time off without pay in 2011. No benefit accruals shall be reduced as a result of this furlough. If an employee chooses to pay their portion of PERA, the County will pay the employer portion. On September 21, 2011 the Employer amended its position by inserting after the first sentence above, “Employees shall be credited with not less than the normal work hours that the employee was originally scheduled to work for the purpose of seniority and benefit accrual only. The financial impact of the furlough shall be subtracted from an employee’s pay in equal amounts beginning January 1, 2012 through the last pay period of the year 2012.” During the hearing on September 22, 2011 the Employer amended its position in the first sentence to say, “There shall be 24 hours of furlough time off without pay to be served in 2012 based on December 31, 2011 rates of pay.” The Union and Employer, after caucusing, stipulated no objections to allowing the changes.
- c. Arbitrator discussion and decision:

- i. The Union objects to this issue as neither procedurally nor substantively arbitrable. Further the Union states, “we were not presented with any evidence of how much money this saves the Employer; and they clearly have the necessary funds as they are now furloughing in 2012 as opposed to 2011.” And the Union argues, “...an award by the Arbitrator of furloughs would violate the contract: Article 9. Arbitrators do not have the authority to violate the contract with their award.” In the hearing the Union raised the issue none of the external comparisons have agreed to furloughs.
- ii. The Employer’s argument continues to relate to financial need and internal consistency. “The County’s amended final position for 24 hours of unpaid furlough time based on 2011 rates of pay is consistent with the uniform pattern of voluntary settlements negotiated with other bargaining units and established for non-union employees at the County. The four settled bargaining units voluntarily agreed to 24 furlough hours in 2011. Non-union employees served the 24 furlough hours in 2011 as well. Employer Exhibit 63-67. The County’s position for 24 hours of furlough in 2012 based on 2011 pay rates is consistent with the uniform internal pattern established by 237 of the County’s 260 employees. The settlement pattern represents 91% of the County’s total workforce. Employer Exhibit 44. The 24 hours of furlough

served by employees represented a \$145,800 savings to the County. Employer Exhibit 35A.”

- iii. This issue is more complex to the Arbitrator than the previous issue of step increases. First the Arbitrator must deal with the issue of arbitrability. Furlough days are recognized by both the parties as terms and conditions of employment (Employer Exhibit #1, Page 3, section 1.2. The Union also represents the LELS Non-Licensed Unit and negotiated similar if not identical language (Employer Exhibit #67, Page 30, section 22.9). The evidence shows the parties negotiated in good faith over this issue and not until the Union’s letter to the BMS on April 18, 2011 (Employer Exhibit #4) was the question of arbitrability raised. In addition the Union allowed an amendment of the Employer’s final position in the hearing. Therefore the Arbitrator finds the issue arbitrable.

The Employer relies on its previous arguments of financial need and internal comparisons. The Union relies on the arguments of external comparisons and conflicting collective bargaining language. Further the Union questions the savings by the Employer. The Arbitrator is not influenced by the issue of conflicting collective bargaining language raised by the Union.

The identical language requested by the Employer is in the LELS Non-Licensed collective bargaining agreement and it would seem

to the Arbitrator the Union would be unlikely to file a grievance should the Employers position be awarded.

The Arbitrator is more influenced, first, by the lack of uniformity between the collective bargaining agreements in this issue, and second, where would the savings come from. Three of the agreements provide a “quid pro quo” (Employer Exhibits #65 and #66) which allows for the days to be used in conjunction with three major holidays. The cost to the employees for these days off is amortized over the year and is negligible to the employees’ wages. In essence they have more time off during a prime time of the year. The third agreement provides for the same benefit, but with an exception if an employee is needed. The day off then becomes a floating day off (Employer Exhibit # 64). The LELS Non-Licensed Unit agreement calls for 24 hour off in the year and other than being part of a total package settlement does not have a “quid pro quo”. It appears the Employer is attempting to create an illusion of savings. To the Arbitrator, the argument of uniformed internal comparisons is therefore weakened.

One must than view the Employer’s argument of savings. Kevin VanHooser, here in after referred to as the County Administrator, testified not under oath, the Jail needed a proscribed number of

staff to operate. Reducing or increasing the number of prisoners would not allow a similar reduction or increase of employees. Based on this premise the Arbitrator questions how there is a savings by reducing the amount of time an employee in the jail is scheduled when you cannot adjust the full time equivalency of the staff. If an employee is forced to take the time off as required under section 22.9 (Employer Exhibit #67, page 30) another employee must be assigned. It then becomes logical, based on the further testimony of the County Administrator concerning a hiring freeze, overtime is used for a replacement. The Arbitrator is not convinced there is any savings as per the Employer's argument.

It is the Arbitrator's opinion the LELS Non-Licensed Unit is a better comparison to the LELS Licensed Unit than the other internal units. The Employer determines its need for law enforcement and sets the employment levels based on that need. If full time equivalencies are established any forced reductions will require replacements costing the same or creating overtime expense. Where is the savings?

The Arbitrator is also required to look to the external comparisons. There was no evidence by the Employer any of the external comparisons had bargained a furlough provision. The Arbitrator is

therefore more persuaded by the Union's argument. For the above reasons the award will reflect no furlough provisions.

F. Insurance – Insurance Health Premiums – Art. 15: The Arbitrator was informed at the beginning of the hearing the parties had resolved this issue. There was no further discussion or evidence presented. Because this issue was resolved by the parties the Arbitrator has no reason to provide any discussion. The award will reflect that the issue was resolved by the parties.

III. RELEVANT CONTRACT PROVISIONS AND GOVERNING RULES

Article 21 – Wages

- 21.1 Effective January ,2009 the wage/salary shall be increase by 3.0% (Appendix A)
- Effective January 1, 2010 the wage/salary shall be increased by 3% (Appendix A)

Article 25 – Duration

Except as otherwise specifically provided, this Agreement shall be effective as of the date signed below and shall remain in full force and effect until the 31st day of December 2010, and shall remain in effect from year to year thereafter unless either party shall give written notice sixty (60) days prior to any anniversary date of its desire to amend or terminate the Agreement.

Article 25 – Duration of Contract

VII. AWARD

For all the reasons set forth by the Arbitrator in the discussion the award is as follows:

1. Duration – Duration of Contract – Art. 23

The agreement shall reflect a two year period beginning January 1, 2011 through December 31, 2012.

2. Wages – Wage Adjustment 2011 – Art. 21

There will be a zero (0) percent increase applied to the wage rates for the year 2011.

3. Wages – Wage Adjustment 2012 – Art. 21

There will be a one and one half (1.5) percent increase applied to the wage rates for the year 2012.

4. Steps – Step Adjustment 2011 – Art. 21

Step adjustment increases shall be frozen during the year 2012 at the 2011 wage rates. Any difference between the 2011 rate and the 2012 rate shall be paid to the employee in the year 2012 as though the employee had received the step increase.

5. Furlough – Furlough Days – New

The request for a furlough day provision is denied.

6. Insurance – Insurance Health Premiums – Art. 15

The issue of insurance premium was resolved by the parties and is awarded as per their agreement.

The undersigned retains jurisdiction over the case for the limited purpose of overseeing the intended implementation of this **Award**,

Issued and ordered on this ____ day of _____,
2011 from Duluth, Minnesota.

Anthony R. Orman, Labor Arbitrator