

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICES, INC., LOCAL 68

Union

and

BMS Case No. 10-PN-1606

CITY OF LITTLE FALLS,

Employer

NAME OF ARBITRATOR:	George Latimer
DATE AND PLACE OF HEARING:	November 2, 2011 Little Falls, Minnesota
BRIEFS RECEIVED:	November 22, 2011
DATE OF AWARD:	December 21, 2011

APPEARANCES

FOR THE UNION:
Nick Wetschka, Business Agent

FOR THE EMPLOYER:
Pamela R. Galanter, Attorney

INTRODUCTION

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. 179A.01-30. Law Enforcement Labor Services, Inc (Union) is the exclusive representative for the Patrol Officers, Sergeants, and non-licensed Dispatchers employed by the City of Little Falls (Employer or City).

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. 179A.16)

The prior collective bargaining agreement between the parties expired on December 31, 2008. The parties negotiated for a successor agreement and agreed to some but not all provisions. On April 1, 2011 the Bureau of Mediation Services certified the following issues for interest arbitration:

- 1. Wages, General Increase for 2009-General Increase, If Any-Art. 16.1, Schedule A**
- 2. Wages, General Increase 2010-General Increase, If Any-Art 16.1, Schedule A**
- 3. Wages, Steps For 2010-Should Steps Be Granted For 2010?-Art. 16.1, Schedule A**
- 4. Wages, General Increase For 2011-General Increase If Any-Art 16.1, Schedule A**
- 5. Wages, Steps For 2011-Should Steps Be Granted For 2011?-Art. 16.1, Schedule A**
- 6. Funeral-What Should Be The Number Of Sick, Days Allowed For Funeral Leave?-Art.11.5**

Hearing was held November 2, 2011. Both parties had full opportunity to submit documents and examine witnesses. Written closing briefs were received by the Arbitrator on November 22, 2011 and the record was closed.

UNION FINAL POSITION

1. Wages, General Increase for 2009

General across the board increase of three (3%) percent for 2009

2. Wages, General Increase for 2010

General across the board increase of zero (0%) percent for 2010, if the arbitrator grants the Union's final position for steps.

If the arbitrator grants the Employer's final position of no Steps, the Union is proposing a general across the board increase of one and one half (1.5%) for 2010

3. Wages, Steps for 2010

Steps be granted for 2010

4. Wages, General Increase for 2011

General across the board increase of zero (0%) percent for 2011, if the arbitrator grants the Union's final position for steps

If the arbitrator grants the Employer's final position of no Steps, the Union is proposing a general across the board increase of two (2%) percent for 2011.

5. Wages, Steps for 2011

Steps be granted for 2011

6. Funeral Leave Art. 11.5

11.5 Employees are eligible for up to five (5) days of accumulated sick leave, if necessary, for permanent employees to attend a funeral of the employee's spouse, children, step-children, parents, step-parents, spouse's

parents, or spouse's step-parents. Employees are eligible for up to three (3) days of accumulated sick leave, if necessary, for permanent employees to attend a funeral of the employee's brothers, sisters, step-siblings, grandparents, step-grandparents, spouse's brothers, sisters, step-siblings, grandparents, or step-grandparents.

EMPLOYER FINAL POSITION

1. Wages, General Increase for 2009

No general increase for 2009 (0%)

2. Wages, General Increase for 2010

No general increase for 2010 (0%)

3. Wages, Steps for 2010

No step increases in 2010

4. Wages, General Increase for 2011

No general increase for 2011 (0%)

5. Wages, Steps for 2011

No Step increases in 2011

6. Funeral Leave

No change to current language:

11.5 Employees are eligible for up to three (3) days of accumulated sick leave, if necessary, for permanent employees to attend a funeral of the employee's spouse, children, parents, grandparents, brothers, sisters, and the spouse's parents.

UNION ARGUMENTS

The Union argues that external or market comparisons should be strongly considered by the Arbitrator in determining appropriate wage levels. This unit has been below the average of comparable communities, and is ranked near the bottom of that group. It argues that awarding the Union position would still leave this group well below the average. If the Union's position is granted for 2009, the patrol officers' pay will fall to 4.4% below the market average, and in 2011 it will fall to 6.4% below the average. Similarly for Sergeants, the Union's wage position would bring them to 5.6% below the market average in 2010, and 6.6% below in 2011. Granting the Employer's position will reduce their relative positions further, sergeants to 5.9% below average in 2009 and 8.8% below in 2010, nearly 10% below in 2011. For dispatchers the effects of the two proposals is even worse, with the Employer's wage proposal placing dispatchers 11.7% below the average in 2011 (Union attachments 8, 9 and 10).

In support of its position for step increases, the Union argues all of the comparable law enforcement groups received steps in their settlements (excluding those which did not have steps in their agreements to begin with). It also argues steps exist as a recognition of the steep learning curve for new employees, and the increased value of more experienced employees to the Employer.

With respect to internal comparisons, the Union argues the only group comparable to this unit is the Operating Engineers (Local 49), since the other Little Falls employees were not represented until 2010. Since Local 49 received step increases each year of their agreement, the Union argues there is no 'pattern' of other Little Falls bargaining units receiving no step

increases. Further, even if such a pattern were established, LELS's position within the market comparison group outweighs any internal pattern.

In response to the City's arguments regarding ability to pay, the Union points to the 2010 Comprehensive Annual Financial Report, which indicates the City's assets exceed liabilities, and argues all unrestricted net assets are permissible to use for wage settlements.

The Union asserts the Employer's figure of 16% in unreserved funds is artificially low, because the City 'transferred out' about one million dollars from that fund. If those transfers had not occurred, the balance of the unreserved fund would be just fine. In any event, the Union argues there is only 16% difference between the two party's wage positions. This difference is not great enough to harm the City's financial condition.

In support of its proposal to modify the funeral leave language, the Union argues three days leave is not enough time for the death of an immediate family member. Its proposal for five days leave is the same as the funeral leave provisions in the AFSME and MAPE contracts.

EMPLOYER ARGUMENTS

The Employer argues internal comparisons are a more important consideration in interest arbitration than market comparisons. It argues that wage settlements which are consistent between bargaining groups prevents 'whipsaw' bargaining. It argues a regular bargaining process would very likely have resulted in an LELS settlement similar to other Little Falls bargaining units, and an arbitration award which departs from the internal pattern would also have a negative effect on employee morale. The Employer's final proposal keeps this unit consistent with the others, since AFSCME, MAPE and Local 49 all settled for 0% across the board increases all three years. Although the Operating Engineers technically got step

increases in their agreement, those steps were “granted purely because of the minimal economic cost to the City” since step increases for that unit applied to only two employees in 2010, and one employee in 2011. The City also argues since step increases in the LELS unit are larger than steps in the AFSCME agreement, they are more costly to the Employer.

The City argued that in the past decade, interest arbitration awards have given less weight to market comparisons than in the past, and that internal comparisons should be given more influence. However it did present arguments about the interpretation of the market comparison figures. It asserted that its wage position places this bargaining unit at 90-93% of the average of its comparison group, and that this ratio is about the same as how other Little Falls employees compare to the same comparison group of communities. “Little Falls has never been a wage leader”: for example, Accounting Technicians, Custodians, Heavy Equipment Operator, and management positions such as Police Chief and Finance Director, all fall in the 88-93% range in relative salary levels. (Employer Exhibits 61-67)

The Employer placed the most emphasis on its arguments concerning economic conditions and how those affect its ability to pay. In addition to the poor economic conditions in general, and the very grim State deficit figures in 2008 and 2010, the employer also pointed to the Governor’s ‘unallotment’ of payments to local governments in late 2008. In all, Little Falls experienced a State aid reduction of \$1.5 million from 2008 to 2011. The City also cited property value decreases in each of the last three years, altogether 24.4% from about \$452,836 to \$342,332. This in turn reduces the City’s ability to raise property tax revenue. The City points out that on December 31, 2010 it had an unreserved fund balance of only 16%. This is far below the 35%-50% figure recommended by the State Auditor. In

response to the Union's assertion this figure was artificially low, the City submitted information detailing 2010 expenditures totaling \$623,000 for such items as Parks and Recreation, airport improvements, and fire equipment. The Employer also gives examples of numerous non-police service reductions it has made in response to the problematic fiscal situation. As a result, the Police Department share of the general fund went from 28% in 2006, to 33.7% in 2010. (Employer Exhibits 10, 12, 14, 16-19, 24, 27, 29, 31 & 32)

Finally the Employer also disputes the Union's method of costing the two proposals, because it does not take into account the additional costs of items such as payroll taxes, PERA, FICA, and shift differential paid to this unit.

In response to the Union's proposal to enhance the funeral leave provision, the Employer argues the Union has made no showing of hardship caused by the current language, and no compelling arguments for a need for this change.

ARBITRATOR DISCUSSION

There are four factors commonly referenced and relied on in interest arbitration: internal comparisons, external or market comparisons, employer ability to pay, and cost of living/other economic factors. They are all appropriate and legitimate points of reference. The question in dispute here is how these factors should be weighed in the context of this bargaining relationship, at this moment in time.

It is hard to overstate the financial squeeze which currently exists in Little Falls. Property values are down over 24%. Revenues from the State intended to support city services have decreased over \$1.4 million. The

inevitable result is that property taxes must rise if the municipal budget is to be balanced as mandated by law. In response the City's cost cutting has been substantial:

“The City Administrator retired in December 2009 and has not been replaced. The Public Works Director and Finance Officer serve as City Administrator and receive an additional \$7.50 per hour for serving in this capacity...

A Parks Department employee was granted additional unpaid days off through a Memorandum of Agreement with IUOE Local 49 as a cost savings measure.

No temporary summer employees have been hired in 2009, 2010 or 2011. In prior years, the City has hired six to 10 temporary employees in the summer. The City closed the Pine Tree Park Warming hours.

The City closed the Park Maintenance Building and moved employees to the Street Department Building, resulting in savings of approximately \$10, 000 per year in heat, electricity and telephone bills...

In 2010, the City Council decreased the salary of Council members by \$50 per month, and this decrease was renewed in 2011.” (Employer brief and Exs 27, 28,51 & 52)

These cuts are not fluff, but are true reductions in important services. It is significant that the above described service and spending reductions have caused the Police Department's share of the general fund to increase.(Emp Ex 29)

With respect to internal comparisons, the Employer argues the importance of having an agreement which treats employees consistently, (with a very small exception affecting only two Local 49 employees who received steps). The City also rightly points out the larger cost of steps for the LELS unit. This consistency is a valid goal which carries some weight with the Arbitrator in this case.

The Union has presented strong arguments based on equity compared to other departments within its region. These arguments may well be more convincing if and when financial conditions change. Now however, this Arbitrator is persuaded that the inescapable fiscal reality supports the City position. The dramatic and unfortunate reduction in State support for essential services, coupled with shrinking property values, means the only options available to the City are bad ones. Therefore the Arbitrator finds in favor of the City's final wages proposal.

With respect to the funeral leave issue, the Arbitrator agrees that in general, interest arbitration is not an appropriate forum for language enhancements, absent compelling reasons. However since the City has argued strongly for consistency among the bargaining units, and a part of the rationale for a settlement without step increases is internal equity, it is appropriate to award the Union's proposed language, which mirrors that in the AFSCME and MAPE agreements.

AWARD

The Employer's final position is awarded in Issues number 1-5, all wage issues. The Union's final position is awarded for Issue number 6, funeral leave.

George Latimer, Arbitrator

December 21, 2011
Dated: