

Before the Arbitrator Nancy D. Powers

In the Matter of Interest Arbitration between:
Clearwater County, Employer

11-PN-0927

And

Teamsters Public & Law
Enforcement Employees' Union,
Local 320, Union

Date: March 13, 2012

Appearances

For the Union: Halla Elrashidi
 Teamsters Local 320
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 Minneapolis, MN 55414

For the Employer: Terry Foy
 Ratwik, Roszak & Maloney, P.A.
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 St. Paul, MN 55108-5253

Statement of Jurisdiction

Teamsters Local 320 represents the Community Corrections Officers bargaining unit at Clearwater County in Bagley, Minnesota. The County and the Union have engaged in bargaining for a 2011 and 2012 agreement. Subsequent to mediation, the Union sought arbitration under Minnesota Interest Arbitration statutes, which permit "essential" employees

to go to arbitration¹ The undersigned was selected from a list of arbitrators provided by the Minnesota Bureau of Mediation Services. A hearing was conducted on January 20, 2012 in Bagley, Minnesota. Both parties had an opportunity to present evidence and arguments in support of their respective positions. Post-hearing briefs were filed and the record was closed on February 20, 2012.

Issues at Impasse

The Commissioner of the Bureau of Mediation Services certified the following issues as appropriately before the arbitrator for consideration.

1. Health/Welfare-What changes, if any, should be made to the Health/Welfare Plan in 2012?
2. Health/Welfare – What amount should the Employer contribute to the Health/Welfare Plan for 2011?
3. Health/Welfare – What amount should the Employer contribute to the Health/Welfare Plan for 2012?
4. Union Security – What changes, if any, should be made to this section? Article IV, Section 4.4.
5. Employee Rights Grievance Procedure – What changes, if any, should be made to this section? – Article VIII.

¹ Minn. Stat. §179A.16 Subd. 2.

² The parties both agreed that the duration of the new agreement should

6. Duration – What length should the agreement be? Article XXIX.²
7. Uniforms – Uniform Allowance Rollover – New Language – Article X.
8. Salaries/Benefits – By what amount, if any, should salaries be increased for 2011, effective 1/01/11? Article XI, Section 11.1.
9. Salaries/Benefits – By what amount, if any, should salaries be increased for 2012, effective 1/01/12? Article XI, Section 11.1.
10. Shift Differential Salaries & Benefits – What changes, if any, should be made in the hours worked for shift differential in 2011, effective 01/01/11 – Article XI, Section 11.2.
11. Shift Differential Salaries & Benefits – What changes, if any, should be made in the hours worked for shift differential in 2012, effective 01/01/12 – Article XI, Section 11.2.

Relevant Statutory Provisions

Minnesota's Interest Arbitration statute provides for conventional arbitration of items submitted for arbitration.³ The arbitrator has the authority to resolve the issues in dispute. The arbitrator is directed as follows:

In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their

² The parties both agreed that the duration of the new agreement should be two years.

³ Chapter 179A.16 Subd. 2 Minn. Stat.

operations within the legal limitations surrounding the financing of these operations.

Background Facts

Clearwater County is located in Northwestern Minnesota, with Bagley as its County seat. The County has 5 bargaining units representing various employee groups. There are 73 unionized employees. The Community Corrections unit has 16 members. Three of the bargaining units have settled their contracts for 2011 and 2012. The three bargaining units agreed to a 0% with steps increase for both years. Only the Courthouse unit and this unit remain unresolved for both 2011 and 2012. Both are represented by Teamsters Local 320.

The Union and the County used counties in Regional Development 2 (Beltrami, Hubbard, Mahnomen) and Contiguous Counties (Becker, Beltrami, Hubbard, Mahnomen, Pennington, Polk) as their external comparability group. The counties in these groups all settled their contracts for 2011. Only Mahnomen and Becker have settled for 2012.

The County had an ending fund balance of about \$4.5 million in 2010. It has lost almost half a million dollars in state aid through 2011. The Clearwater County Health Service, which the County recently sold, has left the County with a \$4 million debt, \$2 million of which must be paid by the end of 2012.

Three of the County's bargaining units agreed to eliminate one of the three health insurance plans provided: the most expensive plan with a

\$500 deductible. The County contends it cannot explore more cost-effective options as long as it has to continue with the \$500 deductible plan. All of the County's bargaining units receive 100% single insurance coverage. Three units received a family contribution of about \$761 per month in 2011. One unit received a family contribution of \$877, but that unit has a flat dollar amount instead of a percentage contribution.

This unit has a 35/65% split in contributions currently. The employee pays 35% of the cost for the family coverage, the County pays 65%. For 2012, all other bargaining units except for Deputies, Courthouse employees and this unit, have agreed to split any increase in the \$750 deductible plan 50/50% and to base the VEBA contribution on the increase in the premium portion of the family VEBA plan. The County would like this unit to agree to this arrangement. The CCO unit received a greater employer contribution than any other group except for the Highway Department, but it doesn't split any increase like this unit.

Positions of the Parties

The Union

The Union contends that the work of the employees in this bargaining unit is dangerous and stressful and needs to be adequately compensated. The County can well-afford the Union's proposals

The County currently provides health insurance with premiums fully paid for single coverage and 65% of the premium paid for family

coverage. The County has three health plans from which an employee can choose. Both this bargaining unit and the Courthouse bargaining unit have a \$500 deductible plan. The County wants to eliminate this plan, but has offered no incentive for the Union to agree to give up this valuable benefit. Five members of the bargaining unit take this plan. The County should bargain this change.

The County also proposes to change the 65 % contribution the County makes to family coverage to a flat figure. This bargaining unit is the only unit with a 65%/35% split for family premium contributions. This change would result in a \$1389 additional out-of-pocket cost to employees. The County has not justified any reason for the change except that it wants all bargaining units to have the same insurance benefits. It has not met its burden to gain such a change.

The County wants to make a fundamental change in *Union Security*. Only the Sheriff's unit has this language. There have been no problems involving lawsuits. The County hasn't provided justification for this change.

Grievance Procedure change would prohibit arbitrators from considering past practices in determining grievances. No other contract has this language.

Uniform Allowance is new language the Union seeks. It costs the County nothing, but provides more flexibility to employees who often

need to purchase items that cost more than the current \$300 annual allowance covers. The Jail Administrator still retains the authority to approved expenditures.

On wages, the Union proposes a 3% plus steps wage increase for both years. The County has offered a 0% increase with step movement. The comparable counties in Development Region 2 settled their contracts for 2011. The average increase was .15 per hour. The average percent increase was 1.33%. The average minimum wage in Clearwater County for Jail/dispatch is \$.09 above the average for 2010. If the County's position is awarded, these employees will fall behind the average.

Only two counties, one from each group have settled their contracts for 2012. One (Mahnomen) settled for 1%. Another (Becker) settled for 1.5%.

If the arbitrator awards the County's position on wages, 4 employees, who are at the top of the salary schedule, will receive no wage increase.

The County has a healthy fund balance and its agreement with Sanford Health will result in added revenue to the County. The County granted a starting salary for the County Attorney that was above the salary range for the position. An assistant engineer was granted overtime

even though the employee was considered an exempt employee not eligible for overtime. The County clearly can afford the Union's demand.

Shift Differential should be changed from paying .70/hour during the hours of 12am – 8am to 7pm-7am. The County resists any change. Shifts have changed from 8 hour shifts to 12 hour shifts. The differential should reflect this change. Additional jail inmates are being housed in the County's jail with added responsibilities to this unit. The shift differential should reflect these longer shifts and added responsibilities.

The County

The County contends wages should be based on the unique circumstances of a county. Internal comparisons are the most relevant. The County has the second lowest tax capacity of counties in the comparability groups. Its population density is below average. The County's rate of taxation is 4% above average for the group.

The County wants to eliminate the \$500 deductible insurance plan. It is the most costly plan. Only 5 members of the bargaining unit elect it. If eliminated, the County could add a new plan. All of the other non-Teamsters bargaining units agreed to drop the \$500 deductible plan for 2012. This unit should agree as well.

All the bargaining units receive 100% single coverage for health insurance. Three bargaining units receive a family contribution of about \$761 per month in 2011. This bargaining unit received a greater employer

contribution than any other unit except the Highway Department, which has a flat \$877 contribution. The arbitrator should end this inequity and bring this unit into line with the majority of the other bargaining units. This unit shouldn't be rewarded for "holding out".

The County concedes that its proposal to add attorney's fees to the collective bargaining agreement's indemnification clause is a "throwaway" item which it would drop if its position on wages and insurance are awarded. The Deputies bargaining unit contract has this language in it.

The County's proposal to narrow the language of the arbitration clause of the contract is also expendable by the County. The County would drop it if the County's position on wages and insurance is awarded. The Sheriff Deputy unit has this language in its contract.

The Union's proposal requiring the County to roll over any unused money from the employee's uniform is not found in any County contracts, nor in any contracts in the comparability groups. The Union has not met its burden to show a need for the change.

The County contended the County has suffered severe financial restraints, as have all levels of Minnesota government. The County has experienced a reduction in state aid of \$383,000 since the last contract with the CCO unit was signed. The County's ability to increase the local levy is limited by the State. Law enforcement employees are funded

primarily from the Revenue Fund tax levy. For 2012, the fund will increase only \$80,000. Steps for this bargaining unit cost \$20,873.

The County has owned and operated Clearwater Health Services, though it has operated at a deficit for some time. Sanford Health has purchased the Services equipment and ongoing business and will pay rent for the physical facilities. However, the County is left with a \$2 million deficit it must make up by the end of 2012.

The other bargaining units in the County, except for the other bargaining unit represented by Teamsters, all recognized the difficult financial position of the County and negotiated settlements providing for a 0% wage increase plus a step for eligible employees in 2011 and 2012. Granting the CCO unit a higher increase than those negotiated with the other bargaining units would undermine the collective bargaining process in the County.

The County commissioned a job evaluation market study for all bargaining units. The parties negotiated a 2% increase in the salary structure and eligible employees received a step. The same thing happened in 2010. The County has established a settlement pattern that the arbitrator should not upset. The Union has not offered any quid pro quo which would argue for disturbing this pattern.

The Union wants to increase the time for which shift differential is paid. It claimed the change was needed because the shifts have

changed from an 8 hour shift to a 12 hour shift. This is not a compelling reason. It merely costs the County more. The shift differential was to compensate employees who worked during the time they would normally be sleeping.

Discussion and Conclusions

The accepted standard for arbitrators for deciding dispute in interest arbitration in Minnesota is to try to determine, based on the best evidence available, what the parties would have negotiated for themselves in the absence of interest arbitration.⁴ The evidence which is relevant to making that determination is both an internal and external comparison with similarly situated employee groups who have negotiated settlements, as well as the bargaining history of the parties and the employer's ability to pay. In this time of severe financial restraints, the ability of the governmental unit to pay for an award is much more of a concern than in years past, when both the economy and tax revenues were more robust.

An arbitrator in an interest arbitration does not ordinarily plow new ground for the parties. The parties should work out their problems at the bargaining table whenever possible. If there is a demonstrable problem that can easily be solved with contract language and one or the other

⁴ Teamsters Local 320 and Dakota County, BMS Case 11-PN-0466 (Jacobs, 2011).

party has known about and refused, over time, to address, then arbitration may be the vehicle to bring about a change. The burden of persuasion is on the party proposing a change from current language. Sometimes the parties negotiate a quid pro quo exchange for changes in the agreement. Arbitrators also can make such a change, but the burden on the proponent is high.

It is with these principles in mind that I make the following award.

1. Health/Welfare-What changes, if any, should be made to the Health/Welfare Plan in 2012?

No changes should be made. The County has not satisfied the burden for proposing a change. There is no "clear trend" of insurance benefits in Clearwater County. The County has made some move towards uniformity, but has a ways to go. This group negotiated the \$500 deductible plan with the County at the bargaining table. Five employees take it. The parties should negotiate eliminating it.

2. and 3. Health/Welfare – What amount should the Employer contribute to the Health/Welfare Plan for 2011 and 2012?

The current language should be continued into the 2011 and 2012 contract. That is, the increase in family plan contribution should be split 35% employee, 65% employer. The parties voluntarily agreed to the 35/65 split. The County argued that internal comparability demands a change in this provision. There is not uniformity among the bargaining units in the

County about the contribution of the County. Only three of the bargaining units have the County's language. The County has offered no quid pro quo to make such a change. There is no doubt that the costs of insurance have increased dramatically over the years. But the County did not make an argument that the cost was driving its position. The County's contribution to insurance is the lowest of the counties in the comparability groups except for Polk County. If a change is to occur, the parties should bargain it.

4. Union Security – What changes, if any, should be made to this section? Article IV, Section 4.4.

The language of Article IV, Section 4.4 should remain as it currently reads. The County did not make a case that this was a problem for the County.

5. Employee Rights – Grievance Procedure. What changes, if any should be made to this section?

The contract language should be maintained. The County did not show that there was any problem which this proposed change would address.

6. Duration – the parties stipulated that a 2-year agreement was appropriate.

7. Uniform Allowance Rollover – New provision.

The contract should remain unchanged. The Union failed to carry its burden to prove a genuine need for the change. Data presented by the Union indicated that many employees had not even used their uniform allowance for 2011. None of the other bargaining units in the County have this provision. None of the comparable counties have such a provision.

8. & 9. Salaries/Benefits – By what amount, if any, should salaries be increased for 2011, effective 1/01/11? Article XI, Section 11.1?

Salaries/Benefits – By what amount, if any, should salaries be increased for 2012, effective 1/01/12? Article XI, Section 11.1?

I find the County's offer of a 0% plus steps increase for both years the appropriate wage increase. Twelve members of the bargaining unit will get a step increase of 3.5% each year. Those four employees will still be making more than the maximum hourly jail/dispatch in Mahnomon County and \$.74 less than those employees in Becker County.

For 2011, with a 0% plus steps increase, the minimum hourly rate is just below the average and the maximum hourly rate is above the maximum for jail/dispatch for Region 2. In contiguous counties, for 2011 this group will be slightly below average at the minimum jail/dispatch wage and \$.71 above the average at the maximum wage rate for 2011.

For 2012, the minimum wage with 0% plus steps is slightly below the average. The maximum wage for jail/dispatch with the 0% increase plus

steps is above the average in the contiguous group with only two settlements.

Internal settlement patterns weigh heavily on the issue of wages in this case. All non-Teamsters bargaining units have settled their contracts for 2011-2012 for 0% plus steps. One of the units is "essential employees" who also have the right to go to arbitration.

In 2009, the County commissioned a job evaluation pay study. As a result of the study, the County negotiated an increase in the salary range structure of 2% and eligible employees received a step increase in both of two years with all of its bargaining units. The fact that all of the other bargaining units, who are all well-represented, agreed to the County's proposal is a very strong trend which I will not ignore. While the CPI increased for 2011 about 3.4%, when you average the CPI and wage increases of this unit for the last 5 years, the wages are still rising slightly higher than the CPI.

The County, while apparently prudently managing its finances, has encountered challenging circumstances. The sale/lease of the County Health Facility will eventually relieve the County of a drain, but demands an immediate investment to pay off debt. The fund balance of the County is within the range advocated by the State.

The Union points to two circumstances they contend show that the County has adequate funding and is willing to spend funds when it wants

to – in particular to set the pay rate of the new County Attorney, and to pay a County engineer overtime. Neither of these circumstances supports the Union's position. They were rational decisions made by the County for two unique circumstances.

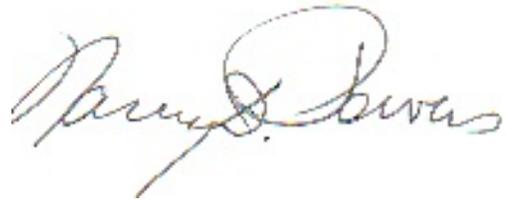
10 & 11. Shift Differential Salaries & Benefits – What changes, if any, should be made in the hours worked for shift differential in 2011, effective 01/01/11 – Article XI, Section 11. Shift Differential Salaries & Benefits – What changes, if any, should be made in the hours worked for shift differential in 2012, effective 01/01/12 – Article XI, Section 11.2.

There should be no change in the shift differential. The Union has failed to carry its burden to justify such a change. Shift differential was intended to compensate employees who work while others sleep. The fact that the County changed shifts to 12 hour shifts from their previous 8 hour shifts did nothing to alter the underlying reason for shift differential.

Award

The parties 2011 and 2012 collective bargaining agreement shall consist of the unchanged language of the previous agreement plus the changes noted above in issues 8&9.

Dated March 13, 2012

A handwritten signature in cursive script, reading "Perry D. Swas". The signature is written in dark ink on a white background. The first name "Perry" is written in a fluid, connected style, followed by a middle initial "D." and the last name "Swas".