

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc.,
Local 243

Union

-and-

BMS Case No. 11-PN-0520 (Sergeants)

City of Apple Valley, Minnesota
Employer

ARBITRATOR: Christine D. Ver Ploeg

DATE & PLACE OF HEARING: May 23, 2012
City of Apple Valley Municipal Center
Apple Valley, Minnesota

DATE OF RECEIPT OF POST-HEARING BRIEFS: June 6, 2012

DATE OF AWARD: June 14, 2012

ADVOCATES:

For the Employer
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For the Union
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INTRODUCTION

This interest arbitration has been conducted pursuant to Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. Law Enforcement Labor Services, Inc., Local 243 (hereinafter the Union) is the exclusive representative of Sergeants who are employed by the City of Apple Valley Police Department (hereinafter Employer). The Union and the Employer have engaged in contract negotiations and have agreed on all but the following items. Members of this bargaining unit are “essential employees” who cannot strike but who have the right to request interest arbitration upon reaching impasse. Minnesota Public Employment Labor Relations Act, §179A.01 - 179A.25. They have done so here, and the parties agree that these matters are now properly before this arbitrator.

ISSUES

The Minnesota Bureau of Mediation certified seven issues to arbitration, four of which remain to be determined.

1. Wages – General Increase, If Any, 2011 and 2012, Art. 32
2. Insurance – What Should Be the Contribution Amount for Insurance? – Art. 22
3. Uniform Allowance – Should the Uniform Allowance Be Modified? – Art. 23
4. Holiday—Should the Holiday Language Be Modified Regarding July 4 and Holiday Bank Use? – Art. 16.1 and 16.7

The parties and this arbitrator met for a hearing on these matters on May 23, 2012. The parties then submitted post-hearing briefs which were received on June 6, 2012. At that time the record was closed.

ANALYSIS

Generally

The two primary bases for decision in any interest arbitration are:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table or, in the case of essential employees, to settle a

strike. Although this determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.

(2) Seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

These comparisons in turn entail a two-fold analysis. First, arbitrators consider an employer's ability to pay. This issue is self evident: it serves no purpose to issue an award that an employer cannot fund and thus could never agree to in collective bargaining. However, a simple assertion of financial crisis does not alone warrant freezing wages and other benefits. It is not unusual for employers to claim financial exigency, and when they do so arbitrators closely scrutinize that claim.

Notwithstanding such scrutiny, it is important to note that recent years have seen significant economic challenges that are obvious to all. No arena has escaped economic hardship: global, national, personal, public and private sectors. The economic climate—past, present and into the foreseeable future—has played a major role in this award.

If the evidence demonstrates that at least some financial improvement is possible and warranted, arbitrators next consider the comparability data. This step requires the arbitrator to evaluate the parties' proposals in two contexts: (1) considering the wages, benefits, and other cost items this employer gives to its other employee groups (internal comparables); and (2) considering what comparable employers provide to similar employees (external data).

In recent years arbitrators have typically given greater weight to internal comparables on the theory that internal equity more clearly reflects what the parties most likely would have negotiated at the bargaining table, and also because external comparisons often present apples to oranges challenges. This is particularly true in difficult economic times and has been true in this case.

The preceding analysis has been applied in making the following awards on the issues in this case.

Issue 1: Wages – General Increase, If Any, 2011 and 2012, Art. 32

<u>City Position</u>	2011	1.0 % General Wage Increase
	2012	1.0 % General Wage Increase effective 1/1/12
		1.0 % General Wage Increase effective 7/1/12

<u>Union Position</u>	2011	3.0 % General Wage Increase
	2012	3.0 % General Wage Increase effective 1/1/12
		3.0 % General Wage Increase effective 7/1/12
<u>Award</u>	2011	1.0 % General Wage Increase effective 1/1/11
		An additional 0.25% effective 12/31/11
	2012	1.25 % General Wage Increase effective 1/1/12
		1.25 % General Wage Increase effective 7/1/12

In reaching this award I have considered the following evidence and argument:

A. Comparability data

Internal Comparisons: Parties present evidence of “internal comparability”-- evidence of the terms and conditions of employment an employer provides its other employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably by comparison. As noted above, an interest arbitrator must try to determine what agreements the parties would have struck for themselves if they had been able to do so. In making that determination evidence of the wages and benefits negotiated by the County’s other employee groups is very relevant.

The above award is consistent with the 2011 and 2012 wages the City has negotiated with its two other bargaining units and established for its non-union employees. The LELS Patrol Officers unit and the City have voluntarily agreed upon a 1.0% general wage increase effective January 1, 2011, a 0.25% increase effective December 31, 2011, a 1.25% general wage increase effective January 1, 2012 and a 1.25% general wage increase effective July 1, 2012. This is similar to the settlement reached with AFSCME Maintenance and the wages set for non-union employees for 2011 and 2012. This internal settlement pattern applies to 97% of the City’s total workforce. There is no compelling reason the eight employees in the LELS Sergeants unit, representing only 3% of the City’s total workforce, should receive a wage award greater than the internal pattern.

The City has maintained an essentially consistent pattern of wage increases for all its employees for many years. The one apparent exception was an arbitrator’s wage award regarding this unit’s 2009 wages, an award issued at a time when there were no settled units for 2009 with which to compare.

This award will not create any Pay Equity issues, and will avoid wage compression within the Department.

External Comparisons: The above award is also consistent with 2011 settlement data within the parties' external comparison group, Stanton Group V. Ten jurisdictions within that group have negotiated a 0.0% general wage increase in 2011, while others have negotiated 0.5% and 1.0% increases. No jurisdiction has negotiated the 3.0% general wage increase the Union has proposed. The limited 2012 settlement data also supports the City's position. Several Stanton Group V jurisdictions have negotiated 0.0% or 1.0% general wage increases in 2012; none have negotiated a 3.0% general wage increase.

In addition, these employees enjoy an exceptional incentive wage supplement. When this bargaining unit first organized in 1998, the parties negotiated a Master Sergeant Program by which Sergeants could qualify for additional compensation of up to 2.5% the employee's base pay upon satisfaction of the Master Sergeant Program standards. This percentage has been increased in subsequent years so that today employees who qualify—which is most of the members of this bargaining unit—enjoy an additional Master Sergeant Program average payment of 6.31%. In short, these employees' salaries are competitive. The Department has no attraction or retention issues.

B. Economic Factors

The Union argues that the City can afford to fund these proposals for these employees, and the evidence demonstrates that is true. However, it is also true that the County's financial situation is more alarming than the Union has acknowledged.

Minnesota's Public Employment Relations Act directs arbitrators in interest arbitrations to consider "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. Sec 179A.16, subd. 7. In this case the City, like virtually all public sector employers in Minnesota, faces extraordinary economic stresses and has been forced to undertake painful steps to maintain mandated services and stay within its budget.

In 2008, it lost \$448,139 in Market Value Homestead Credit through unallotment and in 2009 it lost an additional \$733,344. The City was scheduled to receive \$1,058,525 in 2010, but given the State budget deficit this too was unallotted. From 2009 through 2011 the City also lost a total of \$2,756,967 in Market Value Homestead Credit. Property values in the City have declined and the tax base has fallen 23.9% since 2009. Given the reduction in State aids, the burden has shifted to local property owners so that the effective property tax

rate on a median valued home has been rising since 2007 and is up 15.8% since 2009. Taxpayers will face further pressures with the 2011 legislature's replacement of the Market Value Homestead Credit with a Market Value Exclusion for 2012.

In response to these pressures the City has implemented cost-savings measures wherever possible and has taken significant steps to increase revenues and reduce expenditures. Although the City has sufficient reserve funds to pay for proposed wage increases, those reserves are within the level recommended by the Minnesota State Auditor. Fund balances should be relatively large at the end of the year because of local government cash-flow cycles. Cities must rely on their fund balances to meet expenses during the first five months of the next fiscal year, until they receive the first property tax payments in May and aid payments from the State in July.

In short, the City's economic realities do not support granting the Union's wage proposal.

Issue 2: – What Should Be the Contribution Amount for Insurance? – Art. 22

City Position:

\$ 870 maximum monthly contribution for employees in co –pay plan

\$ 950 maximum monthly contribution for employees in the deductible plan

Additional \$ 80 per month contribution to an employee's HRA or HSA, to expire on December 31, 2012.

Union Position

\$ 959 monthly contribution in 2011. \$ 1,069 monthly contribution in 2012

\$ 10 per month payment for employees who complete a health assessment

Additional \$ 80 per month contribution to an employee's HRA or HSA

Award

\$ 870 maximum monthly contribution for employees in co –pay plan

\$ 950 maximum monthly contribution for employees in the deductible plan

Additional \$ 80 per month contribution to an employee's HRA or HSA for employees who are enrolled in a high deductible health plan.

Parties' Positions:

The current Agreement provides for a minimum \$ 860 dollars per month for 2010 plus an additional \$10 per more for employees who completed a health assessment by December 15, 2009, and an additional contribution of \$ 80 per month to an employee's HRA or HSA for employees who are enrolled in a high deductible health plan.

The Union correctly notes that the City's proposal would change not only its dollar contribution towards health insurance but would also separate types of insurance plans (co-pay and deductible plans) unlike the current Agreement.

The City's proposal encourages employees to elect the deductible plan by providing a higher monthly contribution for employees enrolled in this rather than the co-pay plan. The City notes that it is a well established principle in interest arbitration to closely adhere to internal consistency with respect to benefits negotiated with other bargaining units and established for non-union employees. In this case *all* employees (97% of the City's employees) outside of this eight-person bargaining unit will be subject to these terms.

The City submits that these eight employees—all of whom already are enrolled in the deductible plan—will not be disadvantaged by this proposal. Their worst-case scenario would be out-of-pocket exposure of \$ 290 over the course of the year. Moreover, the City notes that although health insurance premiums decreased this year by 17%, the City is passing those savings on to its employees rather than decreasing the City's contributions.

Regarding the expiration of the \$ 80 per month contribution to an employee's HRA or HSA on December 31, 2012, the city notes that this applies to 97% of all its employees and there is no reason to treat these eight Sergeants differently. The same is true regarding the Union's proposed \$ 10 per month payment for employees who complete a health assessment. No other employee would receive such a benefit.

The Union protests that the city is attempting to get through arbitration what it was not and would not be able to get at the bargaining table. It submits that the City is attempting to separate co-pay and high deductible insurance plans to more easily facilitate the future elimination of more generous traditional co-pay plans that some officers might choose to utilize.

Similarly, the Union protests the City's effort to sunset existing contract language regarding the \$ 80 per month contribution to an employee's HRA or HSA on December 31, 2012, as well as eliminating the \$ 10 per month payment for employees who complete a health assessment.

Discussion

Article 22.1 currently provides:

The Employer shall contribute a minimum \$ 860 per month in 2010 plus an additional \$ 10 per month for Employees (i.e., High Option and Distinctions) who completed the Employer-recommended Health Assessment by December 15, 2009, and an additional \$ 80 per month in an Employee's Health Reimbursement Account (HRA) or Health Savings Account (HSA) for employees enrolled in a high deductible plan, toward the cost of Employer-selected group health, life, and dental insurance for full-time Employees.

An Employee may request either \$ 30 or \$ 60 per month of the excess contribution be paid directly to the Employee monthly.

One of the proposals at issue does not reflect a contract change. The City's \$ 10 per month payment for employees who completed a health assessment expired on December 15, 2009, and there is no basis upon which to renew it given that no other city employee will receive that continued benefit.

By contrast, the City's proposal to sunset existing contract language regarding the \$80 per month contribution to a high deductible employee's HRA or HSA does constitute a change which the City supports solely on the basis that no other City employee will continue to get that benefit. Similarly, the city supports the differential contributions to co-pay versus deductible plans solely on the basis that all other City employees will be subject to those same provisions.

I have balanced the City's desire to maintain internal consistency, especially with respect to benefits, with arbitrators' traditional reluctance to change existing contract language absent a compelling reason to do so. In this case I agree that it is highly desirable to bring all city employees under the same health insurance system and the City's proposal to differentiate between co-pay plans and deductible plans is rational and necessary. However,

given the significance of that change the City's proposal to drop the \$ 80 per month contribution to a high deductible employee's HRA or HSA is not adopted.

Issue 3: Uniform Allowance – Should the Uniform Allowance Be Modified? – Art. 23

City Position:

Maintain existing \$ 850 uniform allowance

Union Position

2011: Uniform allowance of \$ 875

2012: Uniform allowance of \$ 900

Award

2011: Uniform allowance of \$ 875

2012: Uniform allowance of \$ 900

Discussion

As noted, interest arbitrators accord substantial weight to internal comparisons. The evidence demonstrates that Sergeants have historically had a \$25 higher uniform allowance than patrol officers. The Union proposes that for 2011 and 2012 Sergeants will receive the same uniform allowance as patrol officers. This is a reasonable proposal and is adopted.

Issue 4A Holiday—Should the Holiday Language Be Modified Regarding July 4? – Art. 16.7

City Position:

Add language: Employees who require leave on the actual holiday observed, as defined by Section 16.4 of the contract, shall have the time deducted from their holiday leave account.

Union Position

No change

Award

No change

Discussion

In lieu of holiday pay, at the beginning of each year Sergeants are credited with 88 hours of holiday leave time in a holiday leave account. The City pays out any remaining hours in that account at the end of the year. Employees may use their holiday leave bank hours throughout the year, although they are not obliged to do so. Sergeants who work holidays may instead use annual leave or accrued compensatory time, and this is what they have been doing. For example, in 2011 Sergeants requesting time off on a holiday used annual leave 68% of the time, accrued compensatory time 23% of the time, and holiday leave bank hours only 9% of the time. The City views this as double-dipping and proposes that if an employee requests time off on a holiday, the employee must have that time deducted from the holiday leave account.

The Union supports the current practice. It notes that the City has never raised this issue before and there is no apparent reason to address it in arbitration.

The evidence fails to demonstrate a need to change the current contract language. Holiday leave time not used by the end of the year is cashed out, so there is no apparent incentive for the Employee to maintain those hours. In addition, patrol officers still retain use of vacation time for leave on holidays. There is no reason to treat the Sergeants differently.

4B. Holiday—Should the Holiday Language Be Modified Regarding Independence Day? – Art. 16.7

City Position:

Eliminate double pay for Independence Day

Union Position

No change

Award

No change

Discussion

The current contract sunsets double pay for Independence Day effective December 31, 2012. Ordinarily that would favor the City's proposal to now drop that language from the Agreement. However, it remains relevant that all members of the Department are required to

work Independence Day, and the patrol officers do have this double pay provision going forward. To grant the City's proposal to eliminate the 4th of July as a premium holiday would create an inequity within the police department by which Sergeants would be paid less than the officers it supervises on that day. The Union position on Independence Day is adopted.

AWARD

Issue 1: Wages – General Increase, 2011 and 2012, Art. 32

2011	1.0 % General Wage Increase effective 1/1/11 An additional 0.25% effective 12/31/11
2012	1.25 % General Wage Increase effective 1/1/12 1.25 % General Wage Increase effective 7/1/12

Issue 2. Insurance – What Should Be the Contribution Amount for Insurance? – Art. 22

\$ 870 maximum monthly contribution for employees in co –pay plan

\$ 950 maximum monthly contribution for employees in the deductible plan

\$ 80 per month contribution to a high deductible employee's HRA or HSA

Issue 3. Uniform Allowance – Should the Uniform Allowance Be Modified? – Art. 23

2011: Uniform allowance of \$ 875

2012: Uniform allowance of \$ 900

4A. Holiday—Should the Holiday Language Be Modified Regarding and Holiday Bank Use? – Art. 16.1

No change

4B. Holiday—Should the Holiday Language Be Modified Regarding Independence Day? – Art. 16.7

No change

June 14, 2012



Christine D. Ver Ploeg