

MINNESOTA BUREAU OF MEDIATION SERVICES

ARBITRATION AWARD

In the Matter of the Arbitration)	
)	
Between)	
)	
LAW ENFORCEMENT LABOR SERVICES)	File 12-PN- 0995
)	
and)	JOHN REMINGTON
)	ARBITRATOR
COUNTY OF ANOKA, MINNESOTA)	
CORRECTIONS DEPUTIES)	
)	
)	

THE PROCEEDINGS

The above captioned parties, having been unable to resolve an impasse arising out of the inability to agree upon the terms and conditions of a new collective bargaining agreement, selected the undersigned Arbitrator John Remington, pursuant to Section 179A.16 of the Public Employment Relations Act and through the procedures of the Minnesota Bureau of Mediation Services, to hear and decide the matter in a final and binding determination.

Accordingly, a hearing was held on July 25, 2012 in Anoka, Minnesota, at which time both parties were represented and fully heard. The parties presented oral testimony and

documentary evidence. No stenographic transcript of the proceedings was taken and the parties requested the opportunity to file post hearing briefs which they did subsequently file on August 15, 2012.

The following appearances were entered:

FOR THE EMPLOYER:

Scott Lepak

Attorney at Law
Barna, Guzy & Steffen, Ltd.

FOR THE UNION:

Kim Sobieck

Business Representative

THE ISSUES

At the time the parties reached an impasse in collective bargaining, they identified the following five (5) issues to the Minnesota Bureau of Mediation Services for resolution through interest arbitration: (1) Duration of the Collective Agreement- Article 28); (2) Wages for 2012- Article 22; (3) Wages for 2013- Article 22; (4) Wages/ Performance Base Increase for 2012- Article 22 and (5) Wages/ Performance Base Increase for 2013-Article 22. The following discussion and award groups Issues numbers 2 and 3, and Issues numbers 4 and 5 together as they were presented by the parties at the hearing. The parties agree that these issues are properly before the Arbitrator for final and binding determination.

BACKGROUND

Anoka County, Minnesota, hereinafter the “EMPLOYER” or “COUNTY,” is geographically adjacent to the Minneapolis/ St. Paul metropolitan area. It is the fourth largest county in the State of Minnesota. The County is a public employer within the meaning of Minnesota Statutes §179A. The Law Enforcement Labor Services (LELS) and its local union #198, hereinafter referred to as the “UNION,” is the duly certified exclusive collective bargaining representative for Detention Deputies employed by the County. The parties were unable to fully agree on the terms of a new collective bargaining agreement during negotiations in 2011 and, in the spring of 2012, submitted the outstanding issues to the Bureau of Mediation Services for interest arbitration.

DISCUSSION, OPINION AND AWARD

ISSUE #1: Duration of the Collective Agreement

The Employer seeks a one (1) year agreement for calendar year 2012. The Employer concedes that there is no significant comparison, either internal or external, that significantly impacts this issue. Only two of the County’s eight internal bargaining units have settled for 2012 and only one unit has settled for 2013. Of the four counties (Dakota, Ramsey, Scott and Washington) that the County maintains have traditionally made up the external comparison group, only one of these counties has an agreement in place going forward. Accordingly, there is little, if anything, for the Arbitrator to consider in making an internal or external factor comparison. However, the County argues that the only internal pattern of single year versus multi-year contracts that can be established is in favor of single year contracts. The Employer’s argument in this regard is not persuasive. Rather, the evidence submitted suggests that there is a

mixed internal pattern with approximately half of the contracts being for two years and the remainder for one year. Finally, the Employer takes the position that an unstable and weak economy contributes to uncertain tax returns making it difficult for the County to project its revenues and, accordingly, its ability to fund employee pay increases.

The Union seeks a two year contract covering calendar years 2012-13 and maintains that a two year contract is supported by an internal pattern within the County. The Union also argues that a longer contract is consistent with stable labor relations and that the one year contract proposed by the County will give the County an unfair advantage at the bargaining table.

The Arbitrator cannot ignore the County's citation of his 2006 decision involving the City of Marshall and LES (BMS 06-PN-0742) in which he awarded the City's request for a one year labor agreement. However, as the Union notes here, that award was based on circumstances unique to the City of Marshall and its LELS bargaining unit which are not applicable to the instant dispute. In the absence of any existing internal or external pattern with respect to duration, and in consideration of the Union's argument that a longer agreement will encourage more stable labor relations together with the County's recognition that one year agreements tend to create bargaining anomalies, the Arbitrator finds that a two year agreement as requested by the Union is justified here.

AWARD

The Union's position is awarded. Article 28 shall provide for a two (2) year agreement effective January 1, 2012 and expiring December 31, 2013.

ISSUES #2 and #3: Wages for 2012 and 2013

The County proposes no general wage increase (0%) for 2012 and 2013. In this connection the County argues that economic considerations, internal and external wage comparisons, and cost of living factors support its offer. The Union proposes a one and one half percent (1.5%) increase in each year of the contract. The Employer carefully notes, in both its post hearing brief and the documentation presented at the hearing, the precarious financial situation of County governments generally, and Anoka County in particular. The Arbitrator deems it unproductive to fully recite the County's financial circumstances but is cognizant of the fact that the Employer has comparatively fewer resources to direct to employee wages than it has had in the recent past.

Internal Comparisons

The County also argues that internal wage comparisons, particularly the comparison with the County's work release and juvenile detention officers, a bargaining unit also represented by the LELS, favor its position. While it may be true, as the Employer asserts, that the LELS has "long sought to achieve internal equity with the current detention deputy bargaining unit" by closing the gap between the lower paid work release officer/juvenile detention officers and the detention deputies, the Union can hardly be faulted for attempting to do so. The fact that other Arbitrators have made awards that "closed the gap" in 2001 and again in 2007 is beside the point. Pay equity does not necessarily mean pay equality, particularly where the work performed is substantially different as it is here. It is also true that internal comparison between work release officer/ juvenile detention officers and detention deputies is not the only appropriate comparison. Neither is the fact that the County imposed a 0% wage increase on unrepresented

employees in 2012.¹ More compelling is the fact that two other relevant bargaining units, LELS represented supervisors and LELS represented police sergeants received substantial pay adjustments. This is so even though the Arbitrator recognizes, as counsel for the Employer argued at the hearing, that the sergeants' increase is the result of an anomaly. Further, as the Union notes, the County does not have a historical pattern of providing identical wage increases across all bargaining units or between bargaining units and unrepresented employees. In summary, it is apparent that the relevant internal comparisons that do exist tend to favor the position of the Union.

External Comparisons

The parties agree that the relevant external comparison group, as noted above, includes the geographically proximate counties of Scott, Ramsey, Dakota and Washington. As both the Employer and the Union essentially concede, these comparisons are not very useful for 2012 or 2013 since only two of the counties have reached agreement with their detention personnel. Scott county corrections officers received no increase for 2012 or 2013 and Ramsey county corrections officers received no increase for 2012 and a one (1%) per cent increase for 2013. However, Ramsey and Scott county corrections officers are already the highest paid in the five county grouping and Ramsey County corrections officers are sworn officers unlike the corrections officers in the other four counties in the group. The County also argues that in 2011 the Anoka County detention officers "did not fall farther behind the Dakota and Washington County detention officers," an obvious admission that the Anoka County detention officers have the lowest wages in the comparison group. The Arbitrator must therefore find that external

¹ The Arbitrator is fully in agreement with the view of Arbitrator Anderson (Anoka County and LELS, 07-PN-661) who opined that "where the largest group by far is non-union, the same wage increase imposed on the non-union employees is carte blanche to impose on all represented groups. To do so would virtually eliminate any need to ever negotiate wages. Internal equity goes beyond giving the same wage increase to all employees"

comparisons cannot be given great weight in the determination of an appropriate general wage increase for Anoka County in 2012 or 2013.

Cost of Living/ Purchasing Power

The Arbitrator is in general agreement with the arguments advanced by the Employer concerning the cost of living as measured by the Consumer Price Index (CPI-U). However, it is not insignificant that the CPI increase for 2011 was the second largest for the five year period cited by the County and that there has been an additional small increase in the CPI for the first four months of 2012 moderated by very small decreases in the past three months. Contractual step increases also impact officers in the first four years as the County notes. Overall, the cost of living factor as indicated by the CPI, while slightly favoring the Union's position, is not deemed by the Arbitrator to be highly significant here.

Ability to Pay

It is true, as the Union concedes, that the County's financial condition, while improving, is uncertain at best. Of relevance is the Union's unrebutted assertion that the population of the county is increasing slightly, employment is up, and unemployment is down for 2011. Further, for 2011 the County has a combined ending fund balance of \$173.1 million, an increase of \$28 million from 2010. Its unassigned/ unrestricted fund balance for 2011 was \$29,545,493. While the County cannot be faulted for its prudent and conservative financial posture, its financial picture appears to be improving as evidenced by the significant increase in unrestricted net assets during the past two years accompanied by a decrease in debt in each of those years. While the so-called "Thank you" payment to employees of \$300 each in 2012 is not directly relevant to these proceedings because it was voluntary and not the result of collective negotiations, it does

tend to support the Union's contention that the financial position of the county has improved. In summary, it is apparent that the County has sufficient resources as its disposal to meet the Union's demands should those demands be justified by other factors. In consideration of the foregoing discussion, the Arbitrator finds that a 1.5% general increase for the two year term of the contract is both reasonable and justified.

AWARD

The Union's position is awarded, in part. Article 22, Appendix A shall be amended to reflect a one and one half (1.5%) percent general wage increase for 2012-13.

Issues #4 and #5- Performance Base Increase

The Union here requests that bargaining unit employees within the Performance Based Range System be eligible, effective the first full pay period in each year of the agreement, for a 1.5% movement (increase). The Employer proposes to suspend performance based movement for all employees in 2012. Members of the bargaining unit are subject to a hybrid system providing for step movement at the beginning of employment and a performance based range system for movement after the fourth year of employment. The amount of the performance based potential movement is the subject of negotiations. This program was initiated by the desire of both parties to create a mechanism providing for additional pay to more senior employees once they had reached the top step of the pay plan and the County's desire to incorporate its merit based salary system into the former step system. The County argues that because of the large percentage of employees (mostly non-union) of the County's merit system together with the linkage to the Sheriff's Office performance system, granting detention officers performance

base movement would create internal equity problems since there are no other employee groups at the County that will receive merit or performance based movement for 2012 or 2013. As the County maintains, the Union played, through negotiations, an integral part in the establishment of the above hybrid system. To now permit them to benefit from what is a largely merit system denied to other employees would be inequitable. Neither is the Union's position supported by external comparisons within the five county grouping discussed previously. The Arbitrator is therefore unwilling to sustain the Union's request regarding performance base movement/ increases for 2012.

AWARD

The Employer's position is awarded. Performance base movement as described in Article 22 shall be suspended for 2012. However, should the County grant merit or performance based increases to other employee groups in 2013, the detention deputies bargaining unit shall be eligible for the same increase.

The Arbitrator has made a detailed review and analysis of the testimony and documentary evidence submitted by the parties in support of their respective positions, and he has carefully read and considered the arguments advanced by the parties in their post-hearing briefs. Having considered the above review and analysis, together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that the above findings, observations and awards are sufficient to resolve the impasse between the parties. Further, he has determined that certain other matters which arose in these proceedings must be deemed immaterial, irrelevant, or side issues at the very most, and therefore have not been afforded any significant mention, if at all, for example: whether or not other employees of the

County have rejected organization; whether or not County probation officers have decertified prior representation by another labor organization; the award of Arbitrator Fogelberg in BMS Case 09-PN-833; the award of Arbitrator Miller in BMS Case 10-PN-1306; and so forth.

John Remington, Arbitrator
Arbitrator

August 24, 2012

Inver Grove Heights, MN