

IN THE MATTER OF ARBITRATION) **INTEREST ARBITRATION**
)
 between)
)
 City of Mound, Minnesota)
) **BMS Case No. 12-PN-0609**
 -and-)
)
 Law Enforcement Labor)
 Services, Inc., Local)
 No. 266 (Patrol)) **September 5, 2012**
))

APPEARANCES

For City of Mound, Minnesota

Susan K. Hansen, Attorney, Madden Galanter Hansen,
Plymouth, Minnesota
Catherine Pausche, Finance Director
Kandis M. Hanson, City Manager

**For Law Enforcement Labor Services, Inc., Local
No. 266 (Patrol)**

Dennis O. Kiesow, Business Agent
Kevin McGrath, Business Agent
Dan Niccum, Steward
Brad Schoenherr, Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 266
(Patrol) (hereinafter referred to as the "Union" or "LELS") is
the exclusive representative for licensed Police Officers,
Investigator/Detective and Juvenile Officer employed by the City
of Mound, Minnesota (hereinafter referred to as "Mound", "City"
or "Employer"). The City Police Department includes a Police
Chief, a Lieutenant, two Sergeants, two Detectives and six
Patrol Officers. The Union is the exclusive representative for

the two Detectives and six Patrol Officers in the Bargaining Unit.

The City and the Union (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining agreement that was effective January 1, 2010 through December 31, 2010.

The Parties entered into negotiations for a successor 2011-2012 collective bargaining agreement. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on March 6, 2012, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On March 23, 2012, the BMS determined that the following items were certified for final and binding arbitration pursuant to M.S.A. 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. New Article - Shift Differential - Should this article be added to the new labor agreement?
2. Article XXXI - Employee Salary - What should the general wage increase be for 2011?
3. Article XXXI - Employee Salary - What should the general wage increase be for 2012?
4. Article XXXI - Employee Salary - Should the new labor agreement include "Me Too" language?
5. Article 18 - Insurance - What should the Employer and Employee contribution be toward the insurance premium and the HSA for the new labor agreement be for 2012?

6. Article 18 - Insurance - Post Employment Health Care Savings Plan - Should the current Term and Condition of Employment of an Employer contribution into a Post Employment Health Care Savings Plan administered by policy be placed into the new labor agreement?

Prior to the start of the hearing, the Parties resolved Issue No. 6 (Article 18 - Insurance - Post Employment Health Care Savings Plan) by the Union withdrawing this issue.

The arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on July 27, 2012, at 9:00 a.m. in Conference Room 310, Mound City Hall, 5341 Maywood Road, Mound, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' representatives elected to file electronically post hearing briefs, with an agreed-upon postmark date of no later than August 10, 2012. The post hearing briefs were submitted in accordance with those timelines. The Arbitrator then exchanged the briefs electronically to the Parties' representatives on that date, after which the record was considered closed.

ISSUE ONE: NEW ARTICLE - SHIFT DIFFERENTIAL - SHOULD THIS ARTICLE BE ADDED TO THE NEW LABOR AGREEMENT?

POSITION OF THE PARTIES

The Union requests that an employee working between the hours of 6:00 p.m. and 6:00 a.m. receive an additional \$0.75 per

hour shift differential for 2011 and \$1.00 per hour for 2012. The City is opposed to adding a new shift differential article in the contract.

AWARD

The City's position is awarded.

RATIONALE

The Union is seeking a precedent setting change to the collective bargaining agreement. As the proponent of this proposed addition to the contract, the Union has the burden of establishing a compelling reason for inclusion in the contract.

The Union argues that there are two compelling reasons for their shift differential proposal. First, it is undisputed that not all of the employees in the Mound Police Department work traditional day shift hours that the majority of City employees work. In fact, non-traditional evening and night hours are required in the Mound Police Department, like most law enforcement agencies, to provide law enforcement coverage twenty-four hours a day, seven days a week. The Union notes that additional compensation, such as shift differential, for working undesirable, non-traditional evening and night hours is warranted since recent research has found shift work has major effects both physically and mentally on the employee. It is compensation for the increased risk of medical problems both physical and mental. Thus, according to the Union, the physical

and mental health risks identified by research as being caused by working evening and night shifts is more than a compelling reason to add shift differential compensation to the contract for working under these risky conditions.

To the extent external comparison data is considered, the Parties agree that Mound, with an estimated population of 9,052, should be compared to cities with populations of 5,000-10,000 in DCA Stanton Group 7, in addition to the West Hennepin and South Lake Minnetonka Police Departments. This comparison group is the same grouping unanimously approved by the arbitrators in prior interest arbitration proceedings between the City and LELS in 1995, 2004 and 2008. This comparability group is comprised of 27 cities, including Mound.

The Union argues that another compelling reason for their shift differential proposal is that there is a current trend of adding this compensation to labor agreements for law enforcement officers in the Metropolitan area. Three of the Metropolitan Cities used by the Parties as comparable cities currently have added shift differential to their labor agreements. In addition to these three cities, seven larger Metropolitan Cities and the University of Minnesota have provided their law enforcement officers with this benefit.

The Union's arguments for their shift differential position are noteworthy, but are not persuasive to sustain their

position. While there is no doubt from the research that working undesirable, non-traditional evening and night shift hours increases the risk of physical and mental problems, these same problems are not isolated only to the Mound Police Department, but are commonplace in all law enforcement agencies, including the agreed-upon comparability group of 26 other DCA Stanton Group 7 cities. Even in light of this health risk knowledge, only three cities within the comparability group provide for shift differential, with none of these cities providing for any amounts near those proposed by the Union (Big Lake - \$.50 per hour between 6:00 p.m. and 6:00 a.m.; Corcoran - \$.50 per hour between 11:00 p.m. and 6:00 a.m.; and St. Francis - \$.45 per hour between 6:00 p.m. and 6:00 a.m.). Thus, it is clear that the vast majority of the comparable cities do not provide for shift differential. While it may be true that the majority of cities in Greater Minnesota provide for shift differential they are not comparable to Mound, a Metropolitan City. Moreover, there are only a few larger Metropolitan Cities that provide for shift differential, with the majority of those cities not providing this benefit to their law enforcement employees.

In addition, the historical evidence shows that Mound Police Department employees never requested a shift differential in the three prior interest arbitrations between the Parties.

This historical exclusion demonstrates an understanding between the Parties that shift differential was not a priority economic necessity during bargaining or the interest arbitrations.

Another important consideration is internal consistency among other City employees. There are approximately 59 City employees, with 12 Public Works employees being represented by Teamsters Local No. 320, 3 Police Supervisors being represented by LELS, 8 Police Officers represented by LELS and 36 non-union employees.

The Police Supervisor's unit recently received an interest arbitration decision from Arbitrator David S. Paull dated June 15, 2012, with respect to several impasse issues for 2011 and 2012. This is the only unit with an agreement for 2011-2012. The Teamsters 320 Public Works unit has not settled its 2011-2012 contract and is waiting for the results of this interest arbitration proceeding. The non-union employees have not yet received any economic increases for 2011-2012 from the City and are also waiting for the results of this arbitration proceeding.

There is not and has not been a shift differential provision in the LELS Supervisors contract, Teamsters 320 Public Works contract or the non-union policies. Accordingly, the overwhelming evidence demonstrates an understanding by all City employees, including the Police Officers, that shift

differential was not a necessity to increase their overall total package compensation.

ISSUES TWO AND THREE: ARTICLE XXXI - EMPLOYEE SALARY - WHAT SHOULD THE GENERAL WAGE INCREASE BE FOR 2011 AND 2012?

POSITION OF THE PARTIES

The Union is requesting all steps of the 2010 wage schedule be increased by a general wage increase of 3.0% effective January 1, 2011, and a general wage increase of 3.0% effective January 1, 2012. The City's certified position to BMS was no wage increase to the 2010 wage schedule for 2011 and a 0.5% wage increase effective January 1, 2012. A day before the hearing, the City's position changed to no wage increase from January 1 through June 30, 2011, a 1.0% general wage increase effective July 1, 2011, and a 1.0% general wage increase effective January 1, 2012.

AWARD

The City's position announced the day before the hearing and at the hearing is awarded.

RATIONALE

Active and mainstream interest arbitrators have placed great emphasis on internal consistency for wage increases in recognition of the Pay Equity Act. This is not to say that interest arbitrators should exclude external comparisons. In fact, this Bargaining Unit under the Pay Equity Act is a

"Balanced Class." "In interest arbitration for a balanced class, the arbitrator may consider the standards established under this section...but shall also consider similar or like classifications in other political subdivisions." M.S.A. 471.992, subd. 2 (2011).

External comparisons should be used to ascertain whether the involved bargaining unit is substantially underpaid to warrant a deviation from the internal wage increase pattern.

The past bargaining history establishes that the City has maintained a consistent general wage adjustment pattern between all City employee groups - Teamsters 320 Public Works, LELS Police Supervisors, non-union employees and LELS Police Officers. This historical City wage pattern dates back to 2004. Moreover, this historical City wage practice evolved, in part, as a result of two prior interest arbitration awards with this Bargaining Unit for 2004-2005, which adhered to the negotiated settlement between the City and the Teamsters 320 Public Works unit, and the 2008-2009 contract that established the general wage increase, as no other City groups were settled at the time of the arbitration decision. Thus, it is clear that interest arbitration for this Bargaining Unit has been a "guiding light" in the establishment or adherence of general wage increases for all City groups for the majority of years since the historical wage pattern developed in 2004.

The arbitrator's general wage award of 1.0% effective July 1, 2011, and 1.0% effective January 1, 2012, is identical to that established by Arbitrator Paull in the LELS Supervisors unit. Since Arbitrator Paull has already established the wage settlement trend among City employees for 2011-2012, there is no valid reason to deviate from that decision and historical practice unless the evidence establishes that his award would result in the LELS Police Officers unit being paid substantially lower wages than those in comparable cities.

None of the cities in the comparison group provide their employees with an annual contribution of 4.0% of the employee's gross salary to the employee's individual post retirement Health Care Savings Plan account as is received by all City employees. This is a substantial economic benefit to all City employees. Based on the Police Officer's 2010 wage schedule, the City's 2010 annual 4.0% contribution equates to an additional \$0.88 to \$1.18 per hour for each employee. This contribution amount should be included in the wage comparison data since it relates to an economic benefit received by all City employees. By adding this economic benefit to the arbitrator's general wage increase, the maximum salary for Mound Police Officers increases to \$31.08 per hour in 2011 and exceeds the average maximum salary in the comparison group by \$.75 per hour. For 2012 this economic benefit and arbitrator's award would increase the

maximum salary to \$31.39 per hour, which is \$0.14 per hour above the average for 2012. Thus, it is clear that Mound Police Officers are receiving salaries that are above or near the average of comparable cities.

There is little that needs to be stated about the City's financial condition. Clearly, the current recession has impacted the City and their employees, but not to the extent that the City is nearing insolvency or financial ruin. To the contrary, the City had a 2010 year end general fund balance in excess of \$2.2 million. In 2011 the City's financial condition actually improved with an increase of the year end general fund balance of \$146,641. As a result, the City's approved 2012 budget included a 6.75% reduction in the General Fund levy and an overall levy reduction of 2.24% in the level of property tax. The City's cash and investments increased from in excess of \$7.6 million to over \$8 million. The City has maintained a very strong "AA" bond rating issues by Standard and Poor's based on a "Very strong-to-extremely strong income and wealth indicators." Finally, the City's fund balance is within the 35%-50% range recommended by the State Auditor.

The City acknowledges that it has the financial ability to pay for their own wage proposal (which was adopted by the arbitrator), and there is no cost associated with the arbitrator's denial of shift differential payments. Even if the

Union's position is granted on health insurance, the City can easily afford that proposal.

There is no convincing evidence that any of the arbitrator's awards "singularly" or as a "total package" would place the City out-of-compliance with the Pay Equity Act. The City was able to comply with the Pay Equity Act based on the T-test, with wages for the Police Officer classification resulting in salaries above the predicted pay value by \$247.76 per month.

The Union submitted data relative to the 2011 and 2012 CPI and argued that its position of a 3.0% wage increase for both years is justified to avoid wage erosion. There was no increase in the 2009 CPI, with the index being (0.6%). Despite the negative 2009 CPI, this Bargaining Unit still received a 3.0% general wage increase in 2009. Based on a comparison of wage increases versus the CPI from 2001 through 2010, employees' wage increases have exceeded the CPI increases over the nine year period by 4.9%. Thus, this unit is keeping pace with the CPI without suffering any irreversible economic harm.

It should also be noted that the City is evaluating opportunities to collaborate with other agencies to reduce the costs of providing police protection services. The City is currently evaluating and negotiating a contract for services with the City of Orono for law enforcement services. While this is a stressful situation for both the City and their Police

Officers, the City has been trying to work out the best deal for their Police Officers. Upon finalization of the contract with Orono, Mound Police Officers will be paid out their severance, which ranges from 53% up to 80% of accrued sick leave and paid out for all vacation accruals effective December 31, 2012. In addition, Mound Police Officers may roll over up to 80 hours of accrued vacation and sick leave. The Orono wage schedule is approximately \$1.00 per hour higher than the Mound wage schedule. The Orono collective bargaining agreement with LELS includes longevity and the Mound contract does not. Upon finalization of the contract for services between Mound and Orono, Mound Police Officers will realize these substantial increases in their wages and benefits effective January 1, 2013.

Attraction and retention is another component of market comparison. While the City has had excellent attraction and retention in its Police Officers unit this will become moot when the Police Officers become employed by the City of Orono.

ISSUE FOUR: ARTICLE XXXI - EMPLOYEE SALARY - SHOULD THE NEW LABOR AGREEMENT INCLUDE "ME TOO" LANGUAGE?

POSITION OF THE PARTIES

The Union is requesting that the following new contract language be added:

If any City Employee receives a raise greater than received by this group, the City shall increase the wage schedule by the same amount.

The City is opposed to adding this new collective bargaining agreement language.

AWARD

If any City Employee receives a general wage increase (other than through reclassifications or promotions) greater than received by this group, the City shall increase the wage schedule by the same amount.

RATIONALE

The awarded language will provide needed protection for the Police Officers for the duration of this agreement given the facts that this will be the last contract between the Parties, the wage rates for the non-union employees have not been established by the City and the Teamsters 320 Public Works unit is not settled for 2011-2012. Because of this uncertainty, Public Works employees and/or non-union employees could conceivably receive a greater general wage increase than awarded by the arbitrator in this case. This awarded language guarantees that this Bargaining Unit is treated fairly and equally like all other City employees until their departure to Orono.

The City was opposed to the Union's "Me Too" provision because of the term "raise" ("if any City employee receives a raise greater than received by this group...") was allegedly ambiguous. The Arbitrator removed any ambiguity by replacing

"raise" with "general wage increase," and qualifying this language to exclude a wage increase for reclassifications or promotions received by a City employee, which were concerns raised by the City.

ISSUE FIVE: ARTICLE 18 - INSURANCE - WHAT SHOULD THE EMPLOYER AND EMPLOYEE CONTRIBUTION BE TOWARD THE INSURANCE PREMIUM AND THE HSA FOR THE NEW LABOR AGREEMENT BE FOR 2012?

POSITION OF THE PARTIES

The Union's position certified to arbitration was to modify the current language in Article XVIII, Insurance, Section 18.1 as follows:

18.1 The Employer agrees to pay the full premium for the employee only hospitalization/major medical insurance for each full-time employee from the first of the month following thirty (30) days of continuous employment. The Employer agrees to contribute up to \$925.00 per month in 2011 toward the cost of family coverage or dependent coverage plus one (1) from the first of the month following thirty (30) days of continuous employment for each full-time employee who elects coverage under this Agreement. Any additional costs for such family coverage shall be paid by the employee through payroll deduction. In no event shall the employer's contribution exceed the actual cost of the coverage selected by the employee.

Effective January 1, 2012, the Employer agrees to pay seven hundred dollars (\$700) into a cafeteria plan for full-time employees taking single hospitalization/major medical insurance. The Employer agrees to contribute \$925.00 per month toward the cost of family coverage or dependent coverage plus one (1) for each full-time employee who elects coverage under this Agreement. Any additional costs for such family coverage shall be paid by the employee through payroll deduction. In no event shall the employer's contribution exceed the actual cost of the coverage selected by the employee.

Responding to an objection by the City, the Union changed its position at the hearing to retain the current contract language in Article XVIII, Section 18.1 (other than date changes) as follows:

18.1 The Employer agrees to pay the full premium for the employee only hospitalization/major medical insurance for each full-time employee from the first of the month following thirty (30) days of continuous employment. The Employer agrees to contribute up to \$925.00 per month in 2011 and 2012 toward the cost of family coverage or dependent coverage plus one (1) from the first of the month following thirty (30) days of continuous employment for each full-time employee who elects coverage under this Agreement. Any additional costs for such family coverage shall be paid by the employee through payroll deduction. In no event shall the employer's contribution exceed the actual cost of the coverage selected by the employee.

The City's position with respect to Article XVIII, Section 18.1 is as follows:

18.1 The Employer agrees to pay the full premium for the employee only hospitalization/major medical insurance for each full-time employee from the first of the month following thirty (30) days of continuous employment for calendar year 2011. The Employer agrees to contribute up to \$925.00 per month in 2011 toward the cost of family coverage or dependent coverage plus one (1) from the first of the month following thirty (30) days of continuous employment for each full-time employee who elects coverage under this agreement. Any additional costs for such family coverage shall be paid by the employee through payroll deduction.

The Employer agrees to contribute up to \$625 per month toward the cost of single coverage for the employee only hospitalization/major medical insurance for each full-time employee from the first of the month following thirty (30) days of continuous employment for calendar year 2012. The Employer agrees to contribute up to \$825.00 per month in 2012 toward the cost of dependent coverage from the first of the month following thirty (30) days of continuous

employment for each full-time employee who elects coverage under this agreement. Any additional costs for such dependent coverage shall be paid by the employee through payroll deduction.

An employee must be enrolled in one of the Employer's group health insurance plans in order to be eligible to receive Employer's contribution to health insurance premium. Any excess of Employer contribution to the premium cost may be used by the Employee to fund the Employee's Health Savings Account (HSA) to the maximum allowed by the IRS, or toward the purchase of voluntary supplemental insurance plan(s) offered by the Employer.

AWARD

The Union's position is awarded.

RATIONALE

In essence, the Union's position on this issue is no change to the current language in Article XVIII, Section 18.1, with the exception of changing the date from 2010 to 2011 and 2012. The City's position places caps on the City's contribution at \$625 for single coverage and at \$825 for family coverage for 2012.

The City is a member of a consortium known as Local Government Information Systems ("LOGIS") through which health insurance is bid and purchased. Insurance premiums had increased by 10.0% for 2011. LOGIS went out for bids for 2012 and the bid process resulted in a change in the Insurance provider from Health Partners to Blue Cross and the premiums were reduced by approximately 17.0%.

When the insurance premium costs were known, an agreement was reached between the Parties for 2011 with the employees

accepting the total increase in anticipation of the Employer's contribution staying the same and the premium reduction would literally pay them back in 2012. As a result of this agreement, health insurance for 2011 was not certified to interest arbitration.

The current contract language provides the Employer will pay the "full premium" for an employee taking single coverage. The City's proposal is attempting to cap the single premium cost at \$625 per month. This is a major change to the benefit received by the employees taking single health care coverage currently in the contract. In fact, the City's position was rejected by Arbitrator Paull in his recent decision with the LELS Police Supervisors. He instead retained the current contract language that the Employer must pay the full premium cost of an employee taking single coverage. Thus, there is no internal settlement in this case.

Dependent coverage was not an issue in the LELS Police Supervisors arbitration. However, a City employee taking family coverage had their contribution toward health insurance premiums increase at an alarming rate from \$282.70 per month in 2005 to \$1,008.10 per month in 2011 for the same coverage. These employees saw their contribution increase by 356.6% in only 6 years. During this same period, the Employer's contribution increase from \$705.00 per month in 2005 to only \$925.00 per

month in 2011. It is only a 131.2% increase in the Employer's contribution (with these figures being based on the \$30.00 co-pay plan, which historically is used by the Parties for comparison purposes).

The family premiums increased from \$1,755.50 in 2010 to \$1,933.10 in 2011; an increase of \$177.60 per month. The total increase was paid by the employee in 2011. The 2012 premium went down from \$1,933.10 to \$1,603.00 or \$330.00 per month due to a change in insurance carrier. A reduction of \$330.00 per month in premiums appears to be a substantial benefit for the employees. However, when the \$330.00 is reduced by the \$177.60 increase the employee paid in 2011, and the City's proposed \$100.00 reduction in the Employer's contribution, it only benefits the employee by \$42.40 per month. The City is attempting to save more than twice what the Employee will save by the premium reduction.

Whether or not there was some confusion about the intent of the dependent premium to be paid by the Employer after Arbitrator Paull's decision is not material to this case. The Union's position in this case is clear -- \$925.00 per month as is currently in the contract. The Union's amended position of "No Change" to the current contract language with the exception of date changes maintains the understanding by the Union, that

by accepting the complete increase in premiums for 2011, they would be rewarded in 2012.

The City has failed to provide clear and convincing evidence for the proposed health insurance changes of the current language or show the reasonableness of their proposed language. On the other hand, the Union's position is fair, reasonable and equitable with respect to establishing the Employer's insurance contribution for 2012. In addition, the Union's position maintains the current method of distributing insurance cost and gives the employee a slight reprieve from the drastic and unaffordable shift of the premium cost onto the employee.

The Parties are to be complicated on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written post hearing briefs.

Richard John Miller

Dated September 5, 2012, at Maple Grove, Minnesota.