

IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR)	MINNESOTA BUREAU OF
SERVICES, INC.,)	MEDIATION SERVICES
LOCAL 312,)	CASE NO. 12-PN-0694
)	
)	
Union,)	
)	
)	
and)	
)	
THE CITY OF BAXTER,)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

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For the Employer:

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On July 31, 2012, in Baxter, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act to resolve collective bargaining issues about which the parties are at impasse. Post-hearing written argument from each of the parties was received by the arbitrator on August 15, 2012.

BACKGROUND

The City of Baxter (sometimes, the "Employer" or the "City") is located in central Minnesota, in the Brainerd lakes resort area.

The Union is the collective bargaining representative of nine full-time Patrol Officers and three full-time Police Sergeants. The City employs twenty-seven other employees, fifteen of whom are represented by a local affiliate of the American Federation of State, County and Municipal Employees ("AFSCME") and twelve of whom are non-union employees.

The population of the City is about 7,900, though the parties estimate the population of the City at about 7,600 in the evidence they presented about external comparisons, i.e., information comparing the wages paid to police personnel by other cities.

The Union and the Employer are parties to a labor agreement that has a stated duration from January 1, 2008, through December 31, 2010. Though that agreement, by its stated duration, has expired, the parties continue to operate under its terms, and I may sometimes refer to it as the "2008-2010 labor agreement" or as the "current labor agreement."

The parties have successfully negotiated some of the terms of a new labor agreement, which will succeed the 2008-2010 labor agreement. They have agreed that the duration of the new labor agreement will cover two calendar years -- from January 1, 2011, through December 31, 2012. They have, however, reached impasse in their bargaining about several bargaining issues,

described below, and, in this proceeding, they seek to resolve those issues in arbitration.

On March 23, 2012, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to three collective bargaining issues that are to be resolved in this arbitration proceeding. I refer to these issues by the following titles:

- Issue 1. Wages - General Increase, if any, for 2011.
- Issue 2. Wages - General Increase, if any, for 2012.
- Issue 3. Sick Leave - Percentage of Unused Sick Leave Payable to Improve Pension Benefits.

ISSUE 1: WAGES - GENERAL INCREASE, IF ANY, FOR 2011
ISSUE 1: WAGES - GENERAL INCREASE, IF ANY, FOR 2012

The current labor agreement establishes pay rates for Patrol Officers through a Wage Schedule that states a starting hourly wage rate and seven step increases. The agreement also establishes a single, unstepped hourly wage rate payable to Sergeants during 2010. Below, I set out the Wage Schedule showing the hourly wage rates payable to Patrol Officers and Sergeants during calendar year 2010:

PATROL OFFICERS

<u>Year</u>	<u>Hourly Wage Rate</u>
Start	\$20.16
After Year 1	20.79
After Year 2	21.19
After Year 3	21.85
After Year 4	22.52
After Year 5	23.84
After Year 6	25.28
After Year 8	25.92

SERGEANTS

Start	\$27.38
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The Union's Position.

For calendar year 2011, the first year of the new contract's duration, the Union seeks a wage increase payable in two stages. First, it seeks a wage increase of 1% over the wage rates established by the 2010 Wage Schedule, payable on and after January 1, 2011. Second, the Union seeks a wage increase, payable on and after July 1, 2011, of an additional 1% over the wage rates thus established as of January 1, 2011.

For the second year of the contract's duration, calendar year 2012, the Union seeks a wage increase of 2% over the wage rates being paid at the end of 2011.

The Employer's Position.

The Employer proposes that there be no increase in the wage rates established by the 2010 Wage Schedule during either year of the contract's two-year duration, though step increases would continue in both years.

Decision and Award.

The parties have presented evidence and argument relating to the following subjects:

The increased cost to the City of the Union's proposals.
Economic conditions since 2008 and how they have affected the City's "Ability to Pay."
Internal comparison -- information about the wages paid by the City to its other employees.
External comparison -- information about the wages paid by other cities to police officers and sergeants.
The rate of inflation.
Retention of Personnel.

Cost. The parties have stipulated that an award of the Union's position for 2011 would increase the Employer's cost by

\$13,094.05 more than would an award of the Employer's position for 2011. They have also stipulated that an award of the Union's position for 2012 would increase the Employer's cost by \$32,908.59 more than an award of the Employer's position for 2012. Thus, by their stipulation, an award of the entirety of the Union's wage proposals for both years of the new contract's duration would increase the Employer's cost by \$46,002.64.

Economic Conditions -- Ability to Pay. The Employer notes that economic conditions in the world, in the United States, in Minnesota and in the City have shown severe stress, starting with the recession that began in 2008 and continues still. The Union argues that the adverse impact of the recession on the finances of the City has lessened recently -- sufficiently to provide the City with the ability to pay the wage increases it seeks for 2011 and 2012.

The Employer presented the following information. Though the Minnesota economy has improved recently, the Minnesota Department of Management and Budget still forecasts a State budget deficit of about \$5 billion for the 2014-2015 biennium. The Employer notes that the recession has impacted the finances of the City in the following ways:

- Though the City benefited from growth in housing and commercial real estate development in the mid-part of the 2000s, there has been a recent softening of real estate valuation.
- The average unemployment rate of Crow Wing County, the county in which the City is located, was 8.9% in 2010 and was 8.4% in 2011.
- The City is no longer eligible for local government aid from the State of Minnesota. The City relies

largely on property tax revenue. For 2011, the property tax levy was about 87% of the City's General Fund revenue. The City's net tax capacity is no longer growing as fast as it did in the last decade. Recent assessed valuations have been declining, and owners of commercial real estate, which comprises a large part of the City's real estate tax base, have initiated tax court challenges to property valuations.

The City projects flat revenues from real estate taxes for 2013.

- The City projects a General Fund budget deficit of about \$223,000 for 2012 and a further deficit of about \$377,000 for 2013.
- The City Council approved an early retirement incentive program in 2010 to reduce personnel costs, but no employee volunteered for the program until 2011, when the City Clerk agreed to retire. The Council then approved the layoff of a Building Inspector and of a Technical Engineer. These three positions remain vacant. In addition, the City has reduced its employment by another four full-time equivalent positions by leaving vacancies unfilled upon the separation of four employees. One of these unfilled positions was that of a Patrol Officer.
- Though assessed valuations of real estate have declined over the past five years, the City has attempted to maintain its revenue from real estate levies by increasing the "tax capacity rate," *i.e.*, the tax levied as a percentage of valuation, from about 41% to about 51%.
- The amount the City has earned by investing its reserves ("investment income") has declined between 2008 and 2011 from about \$778,000 to about \$328,000, and the City projects that investment income in 2012 will decline further to about \$112,000.
- The City has postponed a substantial part of ordinary street maintenance during the recession, reducing the average annual expected spending by about \$640,000, and the Council is considering the use of special assessments to cover future street maintenance costs.

The Union makes the following arguments about the finances of the City:

- The Union argues that the City's Comprehensive Annual Financial Report for 2011 (the "2011 Financial Report") should be used in determining the City's financial

condition because it is an audited report, and the Union urges that the Employer's arguments about its financial condition should be discounted because they are largely based on estimates.

- The Union notes that the net assets of the City increased by 2% in 2011, citing a "Key Financial Highlight" from the 2011 Financial Report, which I set out below:

City-wide net assets increased 2.0% over the prior year, due to a decrease in long-term debt. While total revenues for the year decreased \$1,434,218 from 2010, total expenses increased \$536,062 from the prior year.

- During 2011, the General Fund realized a net surplus of about \$1,642,000 as the result of "higher than anticipated property tax collections, charges for services, interest, rent revenues, and timing of franchise fee receipts," and from "intergovernmental revenues from the school liaison program and financial crimes task force investigative program with the State." This surplus also resulted from expenditures that were \$266,291 less than budgeted "as a result of the contingency account not being fully utilized during the year, cost savings due to decreases in personnel, and realized savings on other miscellaneous purchases or unspent encumbrances."
- The City budgeted the expenditure of \$1,525,000 for operation of the Police Department during 2011, but spent \$61,601 less than that amount. Apparently, some of that saving resulted from the reduction of the number of Patrol Officers from ten to nine, as the City left a vacant Patrol Officer's position unfilled.
- The City had short-term and long-term investments totaling \$24.1 million at the end of 2011.

Internal Comparison. The Employer argues that internal comparison -- information about the wages paid by a public employer to its other employees -- is the most important standard for determining wage rates in an "interests" arbitration proceeding. The Union urges, however, that internal comparison is less relevant as a standard than external comparison -- information about the wages paid by other cities to Patrol Officers and Sergeants.

The Employer has attempted to maintain consistency in the wage increases provided to all of its employees, as the following table of past wage increases shows:

<u>Year</u>	<u>AFSCME Employees</u>	<u>Non-Union Employees</u>	<u>Patrol Officers And Sergeants</u>
2005	3.0%	3.0%	3.0%
2006	3.0%	3.0%	3.0%
2007	3.0%	3.0%	3.0%
2008	3.0%	3.0%	3.0%
2009	3.0% +\$.10/hr	3.0% +\$.05/hr	3.0%
2010	3.0%	3.125%	3.25%

The Employer presented evidence that the 2011 and 2012 wages of its other employees -- both non-union and those who are members of AFSCME -- have not yet been determined and that they will not be determined until the award issues in the present case. When the award issues, it is the Employer's intention to establish the wages of its other employees consistent with the award.

Both parties presented evidence relating to the Local Government Pay Equity Act. That evidence shows that the Employer is in compliance with the Pay Equity Act and that the award of the position of either party in this case will not cause the Employer to be out of compliance.

The Employer argues that, because the award in the present case will determine the wages it pays to its other employees, the actual cost of an award of the Union's position will far exceed the \$46,002.64 stipulated cost increase of an award of the Union's position. The Employer calculates that, applied City-wide to all employees, an award of the Union's

position would cost the City over \$144,000 for the two years at issue.

The Union argues that it represents only the twelve employees of the City who are in the police bargaining unit and that it is unfair to burden those employees, in argument, with the wage costs of the other employees of the City, which are subject to the Employer's control as it determines their wages.

External Comparison. As I have indicated above, the Employer urges that external comparison is not the best standard for determining arbitrated wages. It has, however, suggested cities for comparison, as has the Union. The Union suggests comparison with the cities of Cambridge, Detroit Lakes, Litchfield, Little Falls, Rogers, St. Joseph and Waite Park. The population of these cities ranges from 6,534 to 8,597 and averages 7,656. The Employer suggests comparison with the cities of Crookston, Glencoe, Kasson, Litchfield, Little Falls, Montevideo, St. Joseph, Thief River Falls, Virginia and Waseca. The population of these cities ranges from 5,631 to 9,410 and averages 7,313.

For Patrol Officers, the average top hourly wage rate for 2011 in the Union's comparison group of cities is \$26.79, compared to the January 1 hourly rate of \$26.18 and the July 1 hourly rate of \$26.44 that the Union seeks. For Patrol Officers, the average top hourly wage rate for 2012 in the Union's comparison group of cities is \$27.83, compared to the hourly rate of \$26.97 that the Union seeks.

For Sergeants, the average top hourly wage rate for 2011 in the Union's comparison group of cities is \$30.00, compared to the January 1 hourly rate of \$27.65 and the July 1 hourly rate of \$27.93 that the Union seeks. For Sergeants, the average top hourly wage rate for 2012 in the Union's comparison group of cities is \$30.80, compared to the hourly rate of \$28.49 that the Union seeks.

For Patrol Officers, the average top hourly wage rate for 2011 in the Employer's comparison group of cities is \$24.89, compared to the hourly rate of \$25.92 that the Employer would pay. For Patrol Officers, the average top hourly wage rate for 2012 in the Employer's comparison group of cities is \$25.57, compared to the hourly rate of \$25.92 that the Employer would pay.

For Sergeants, the average top hourly wage rate for 2011 in the Employer's comparison group of cities is \$27.22, compared to the hourly rate of \$27.38 that the Employer would pay. For Sergeants, the average top hourly wage rate for 2012 in the Employer's comparison group of cities is \$27.66, compared to the hourly rate of \$27.38 that the Employer would pay.

Both parties argue that the cities the other party has suggested for comparison were selected for the purpose of enhancing that party's position. The Employer argues that the Union has selected cities that pay well, the Union argues that the Employer has selected cities that pay poorly, and both parties argue that many of the cities selected by the other party lack comparable characteristics that should appear in an

appropriate comparison group. Thus, the Employer argues that some of the cities in the Union's comparison group have wages that are higher because of their proximity to urban areas, and the Union argues that some of the cities in the Employer's comparison group have wages that are lower because they are distant and rural.

Inflation. The Union argues that the rate of inflation as measured by the Consumer Price Index ("CPI") has risen and has weakened the purchasing power provided by current wage rates. In 2011, the CPI rose by 3.7% and in the first half of 2012 by 2.4%. The Employer argues that the police employees now represented by the Union have received wage increases over the past eleven years that exceed the rise in the CPI during those years, thus:

<u>Year</u>	<u>Percent Increase In CPI</u>	<u>Wage Increases By Percent To Police Employees</u>
2001	2.7%	3.5%
2002	1.2%	2.0% (as of 7-1-2002)
2003	1.9%	4.0%
2004	2.4%	4.0%
2005	3.2%	3.0%
2006	2.4%	3.0%
2007	2.7%	3.0%
2008	3.7%	3.0%
2009	-0.6%	3.0%
2010	<u>2.0%</u>	<u>3.25%</u>
<u>TOTALS</u>	21.6%	31.75%

As I understand the argument of the Employer, it urges that use of the CPI as a standard for determining wages should be applied so that in difficult economic times past wage increases that exceeded the then annual CPI are recognized as

providing relief from an adjustment that does not strictly follow the current CPI.

Retention. The Employer argues that it has many long-term employees in Patrol Officer and Sergeant positions, thus implying that their compensation is competitive in the market.

For the following reasons, I award the position of the Employer. First, the revenue that supports the compensation of City employees comes ultimately from taxes. The Employer has shown that it has attempted to maintain revenues from real estate taxes, despite declining valuations, by increasing the tax rate applied to those valuations. The source of real estate tax consists of homes and commercial property, the owners of which are presumably experiencing financial difficulty during the recession. Though the economy of the City may be improving, projections of the City show that its finances are still under great stress.

In 2009 and 2010, the first years of the recession, the wages of police employees (and of the City's other employees) increased by percentages much greater than the rate of inflation during those years. Police wages were raised by 3.0% in 2009 and by an additional 3.25% in 2010, whereas the rate of inflation as measured by the CPI declined by 0.6% in 2009, before rising again by 2.0% in 2010. Thus, for those recessionary years, members of the bargaining unit received increases totaling 6.25%, even though the CPI rose by a modest 1.4%.

The evidence from the external market shows that during 2011 the City's Police Officers were paid an hourly wage rate

slightly above the average level that Police Officers were paid in the seventeen cities the parties have offered for comparison -- \$25.92 per hour paid by the City compared to an average of \$25.62 per hour paid in those seventeen cities. For 2012, the comparison will go the other way -- \$25.92 per hour paid by the City compared to an average of \$26.50 per hour paid in those seventeen cities.

A similar external market comparison for Sergeants shows that the wages of the City's Sergeants compare less well. The average Sergeant's hourly wage rate in the seventeen cities was \$28.36 during 2011 and \$28.95 during 2012 compared to the hourly wage rate of \$27.38 paid by the City. The Employer argues that a lesser wage rate is justified because the City's Sergeants have no supervisory authority, whereas Sergeants in many of the comparison group cities do have such authority.

ISSUE 3: SICK LEAVE - PERCENTAGE OF UNUSED SICK
LEAVE PAYABLE TO IMPROVE PENSION BENEFITS

Section 11.8 of the current labor agreement is set out below:

The City shall pay 50% of an employee's unused sick leave for retiring employees who meet the eligibility requirements for receipt of a pension pursuant to the Public Employee Retirement Association statute and are in good standing with the City.

The Union's Position.

The Union proposes that, in the new labor agreement, Section 11.8 be amended by increasing the percentage of unused sick leave payable by the Employer to improve pension benefits of retiring employees from the current 50% to 60%.

The Employer's Position.

For the new contract term, the Employer opposes any change in Section 11.8.

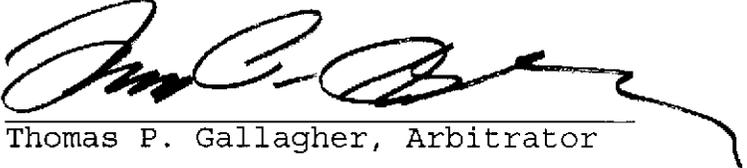
Decision and Award.

The Union argues that some other cities among those in the comparison group it proposes pay a higher percentage of unused sick leave for the benefit of retiring employees, a few as much as 100%

The Employer argues that for many years, all of its employees, members of AFSCME, members of the Union and all non-union employees, have received the same sick leave benefit at issue here, i.e., 50% of unused sick leave payable on retirement to improve pension benefits. The Employer argues that the proper arbitration standard for determining this kind of benefit is internal consistency and that there should be no departure from that standard unless the parties agree to such a change through the give and take of bargaining.

I award the position of the Employer on this issue. A change in this kind of benefit should occur by agreement of the parties, in the give and take of bargaining. Such a change should not be made in arbitration unless there is evidence that, in the external market, the benefit is substantially greater and substantially prevalent.

September 14, 2012


Thomas P. Gallagher, Arbitrator