

IN THE MATTER OF ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc., Local No. 44,
Union,

and

City of Crystal, Minnesota,
Employer or City.

OPINION AND AWARD

Interest Arbitration
BMS Case No. 12-PN-0693

Police Unit

ARBITRATOR:

Gerald E. Wallin, Esq.

DATE OF AWARD:

November 17, 2012

HEARING SITE:

Crystal, Minnesota

HEARING DATES:

October 10, 2012

RECORD CLOSED/BRIEFS RECEIVED:

October 25, 2012

REPRESENTING THE UNION:

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REPRESENTING THE EMPLOYER:

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JURISDICTION

The hearing in this matter was held on October 10, 2012. The undersigned was selected to serve as interest arbitrator pursuant to Minnesota law and the procedures of the Minnesota Bureau of Mediation Services. Five issues originally remained at impasse for interest arbitration pursuant to Minn. Stats. §179A.16, Subd. 2. At the hearing, the parties announced that one of the issues, Duration, had been resolved for a two-year agreement covering the calendar years of 2012 and 2013.

Both parties were afforded a full and fair opportunity to present their evidence pertaining to the remaining four impasse issues. Witnesses were sworn and their testimony was subject to cross-examination. The parties submitted post-hearing briefs, that were duly received on or before October 25, 2012, which closed the record, and the matter was taken under advisement.

ISSUES

According to the submissions of the parties, the following are the issues remaining for interest arbitration:

1. Wages for 2012.
2. Wages for 2013.
3. Employer's Health Insurance Contribution for 2012.
4. Employer's Health Insurance Contribution for 2013.

BACKGROUND

The Employer City of Crystal, Minnesota is a second-tier suburb of Minneapolis located in Hennepin County that was founded in 1866. It lies just to the west of portions of the three first-tier suburbs of Brooklyn Center, Robbinsdale, and Golden Valley, which share common boundaries with the northwestern portion of the City of Minneapolis. According to the 2010 Census, the City had a population of 22,151. The population is again down from the 2000 Census figure of 22,698, which continues a forty-year decline from the 1970 Census peak of 30,925. Its land area is approximately 5.8 square miles and includes a regional airport operated by the Metropolitan Airports Commission. The City is also fully built out with its housing stock essentially completed by the 1970s.

The approximately 103-person workforce employed by the City includes three bargaining

units and an unrepresented group of some 56 employees. The instant Police unit has 21 members in the classifications of Patrol Officer or Investigator/Detective. There are 6 police supervisors in a separate bargaining unit and approximately 20 Public Works employees in the third bargaining unit represented by IUOE Local 49. According to the Union's presentation, this group does not have a right to arbitration.

The parties' most recent previous labor agreement covered the calendar year of 2011.

Both parties presented extensive evidence about the financial condition of the Employer, the current economic climate affecting the Employer, which included CPI data regarding cost-of-living, the prognosis for changes to that economic climate, the impact of the competing proposals on the Employer's compliance with the Minnesota pay equity law, and information for externally comparable cities. In addition, the Employer provided recruiting and retention evidence. As noted, both parties summarized the merits of their respective positions on the impasse issues by means of comprehensive post-hearing briefs.

ISSUES 1 AND 2. WAGES FOR 2012 AND 2013.

The respective positions of the parties are as follows:

Wages for 2012

Union Position Effective January 1, 2012, the wage scales shall be increased by 2%.

Employer Position Effective January 1, 2012, the wage scales shall be increased by 1%.

Wages for 2013

Union Position Effective January 1, 2013, the wage scales shall be increased by 2%.

Employer Position Effective January 1, 2013, the wage scales shall be increased by 1%.

ANALYSIS AND FINDINGS ON ISSUES 1 AND 2

Where strikes and related job actions are precluded by law, interest arbitration becomes a necessary extension of the collective bargaining process. Accordingly, the fundamental objective of interest arbitration is to formulate awards from the evidence that, in theory, represent what agreements the parties would have ultimately reached, mindful of whatever influence a work stoppage might theoretically have provided, had they continued negotiating to a conclusion themselves.¹

Contemporary interest arbitration awards in Minnesota have tended to coalesce around four primary areas of consideration to resolve impasse issues when bargaining parties have failed to reach their own agreements. These considerations may be described as the employer's ability to pay, internal consistency, the comparison of the Employer's position with the external market, and other relevant factors such as cost of living, recruiting & retention problems, pay equity compliance, and the like. However, the national economy entered a significant multi-year decline in 2008 that spread economic storm clouds across the State of Minnesota; they have not yet abated to any significant degree. For example, as of February 2011, the Minnesota Office of Management and Budget still projected a budget deficit of \$5.028 billion for the 2012-2013 biennium. If that forecast proves to be close, it will severely harm the State's ability to provide aid to local governments. As a result, the probative force of the four traditional areas of consideration has changed. Because the lingering economic headwinds have not affected local units of government uniformly, the general impact of external market comparisons has diminished. And because the economic downturn has tended to adversely affect all local units of government to a significant degree, the influences of the employer's ability to pay and factors related to internal consistency have gained prominence.

The Union contends that the Employer has the ability to pay its wage proposal. In addition, the Union maintains there is no internal pattern to be followed because only one bargaining unit is settled for 2012. Therefore, the award should properly be driven by external comparisons and other extrinsic factors such as the rates of the CPI-U for the geographic area. Moreover, the Union notes that its proposals will not cause the Employer to fall out of compliance with pay equity requirements.

¹Law Enforcement Labor Services, Inc., Local 199 and Anoka County, BMS Case 96-PN-912 (Wallin, 1996), p.3.

The Union provided wage evidence for 26 other cities in or near the Twin Cities metropolitan area having populations ranging from 10,000 to 25,000. They are the cities that were formerly known as the Stanton VI Survey group. The grouping included the adjacent cities of Golden Valley and Robbinsdale. For 2011, the period of the previous labor agreement, the bargaining unit ranked at 19th position within the group. According to the Union's data, the unit would rise to 16th position if its wage proposal is awarded. However, the resulting pay level would still leave the unit \$101.79 below the group average. The Employer's position would cause the unit to fall to 21st place and be \$153.69 below the average. The Union also noted that the CPI-U for the midwest rose by 3.4% in 2011 while the bargaining unit received only a 1% increase to the wage scale.

According to the Employer's CAFR² for 2011, the City had unassigned assets of over \$6.6 million which is an amount in excess of the percentage recommended by the State Auditor to be kept available for cash flow purposes.

The Employer's evidence and argument focused on its financial health and ability to pay as it looks to the future as well as internal consistency considerations. It also identified eight metro-area cities with comparable financial characteristics in areas other than just population size as a proffered external comparison group.

Not surprisingly, the Employer's evidence presents a significantly different point of view from that of the Union. It notes that the revenues needed to fund its operations have been declining significantly in recent years. The City is fully developed with essentially only redevelopment opportunities to ameliorate losses to its tax capacity. Its tax capacity has steadily declined in recent years and experienced a further decrease of 11.9% going from 2011 into 2012. The median market value of the City's housing stock has fallen from \$188,000 to \$130,000 since 2008.

The income the City receives from interest and investments declined by 10.3% in 2011; through June of 2012 it was only \$36,639, which is projected to be significantly less than its 2011 income.

The City's taxpayers have been adversely affected by the economic downturn. Although relatively better off than Hennepin County and the State of Minnesota in general, the City has 9.3% of its residents below the poverty level. For the period 2006-2010, the City's median household

²Comprehensive Annual Financial Report

income was below that of Hennepin County. Per capita income, in 2010 dollars, was more than \$7,500 below that of the Hennepin County. The City's unemployment rate of 8.3% is approximately 2% higher than that of Hennepin County. The City is one of ten cities in Hennepin County with the highest number of housing foreclosures.

The Employer's evidence also described the efforts it has undertaken to lower its expenditures for staffing and operations. It has reduced full-time headcount and has stretched out the replacement life of its equipment. However, the City needs to spend on capital improvements to its infrastructure. To the extent such maintenance is deferred, it becomes more expensive to perform.

Like other Minnesota cities, it has suffered a significant revenue loss of aid from the State as a result of the financial problems at that level of government. There is no prospect that such aids will be restored to their pre-downturn levels.

Internally, the Employer notes that, unlike the experience of some cities cited in its post-hearing brief, its employees received general wage increases in 2011. The one bargaining unit that is voluntarily settled for 2012 accepted a 1% increase. The Employer also noted that its non-represented employees have also received the same increase for 2012. As a result, 74% of the City's employees have received the 1% general increase. The Employer also contends that it has historically maintained a consistent pattern of wage increases for all employees.

While a 1% general wage increase offer may appear small, the Employer described how the pay scale has four steps in addition to four longevity steps. The average step increase provides an 11.35% pay increase. According to the Employer, the vast majority of bargaining unit members remain within the wage scale and longevity steps. As a result, they remain eligible for pay increases beyond that of a general wage increase.

The 8-city external comparison group advanced by the Employer includes the three adjacent cities of Golden Valley, New Hope, and Robbinsdale. The group has, according to the Employer, similar populations, tax capacities, per capita income, median household income, and median home values as well as being in closer geographical proximity than several of the cities in the Union's group. In this regard, the Employer also noted that the Stanton VI group survey ended in approximately 2005 and is out-of-date. Of the eight cities advanced by the Employer, only two

provided a 2% general increase for the full year of 2012. However, both of those cities had zero increases for 2011. Two other cities experienced larger than 1% increases for the full year of 2012 by paying 1% increases six months apart. Once again, however, both of those cities had zero increases for 2011. Increases of 1% each for 2012 and 2013 apply in Golden Valley, an adjacent city. In addition, increases of 1.25% each for 2012 and 2013 in South St. Paul followed an arbitrated zero percent increase for 2011. For 2011, the bargaining unit's top pay level was slightly above the average of the 8-city group. With the Employer's 1% increase proposal for 2012, the top pay level would remain slightly above the group average albeit less so. Only three of the cities are settled for 2013.

According to the Employer's evidence, the City's general fund balance is needed for cash flow purposes in light of a continuing uncertain economic future. These reserves are needed to pay for expenses such as sick leave, vacation, and capital expenditures. Given the economic times, the Employer contends that its reserves must not be depleted.

The foregoing matters are representative highlights of the kinds of evidence presented by the parties. Both provided substantial data pertaining to the customary types of evidence presented for interest arbitration. It has all been considered.

The evidence presents a clearer picture for 2012 than it does for 2013. Although the CPI data has run higher than increases in the recent past as well as both parties' proposed increases for 2012, the correlation of the CPI with the historical evidence does not show that this has been an important factor for their bargaining.

The Employer's proffered external group of eight cities does reflect similarity in many factors that are strongly relevant to the financial health of each. The Union's grouping is based on population only and was developed well before the current adverse economic climate began. On review, the Employer's proposal of a 1% increase for 2012 is more in line with the increases seen in the eight-city group. The Union's proposal matches the maximum, which was paid by only two cities where both of them were following zero percent increases for 2011; that was not the case for the Employer.

There is also an internal consistency factor that must be recognized. One of the City's other bargaining units has accepted the Employer's proposal of 1% for 2012. While the Union is essentially correct in contending that one bargaining unit does not create a pattern, it is, nevertheless,

a significant point of reference like a benchmark. Departing from it would likely have a disruptive effect on much of the Employer's workforce.

Finally, while some factors suggest that the multi-year economic downslide has bottomed and begun to turn up, the optimism about this seen in the overall evidence is more in the nature of hopefulness. Unemployment, both nationally and locally, continues to be at historically high levels despite the stimulative efforts of the federal government and the federal reserve system. GDP growth is still limping along at levels that will not accommodate the growth in the nation's population that is coming of working age. The City has essentially exhausted available measures to meet its financial obligations. Although the City decreased its property tax levy, the evidence suggests it was in response to the needs of its residents who continue to experience high unemployment levels in a low-wage working environment.

Given the foregoing factors, the finding is that the Employer's position should be awarded for 2012. The current situation continues to call for a conservative approach to meeting the City's financial obligations currently and in the near future.

As previously noted, there is little evidence for 2013 to provide clear support for either party's position. What is clear, however, is that an economic "perfect storm" could be on the horizon for 2013 and into 2014. The recent elections have affirmed the continued implementation of the Affordable Care Act that will take place in 2013 and 2014. To the extent that this law shifts more health care costs to the states without adequate federal funding, then state budgets will be further challenged. A consequence of this may be more reduction in the State's ability to provide financial aids to local governments. More importantly, there is the so-called "fiscal cliff" that looms on January 1, 2013. If Congress fails to avert it, many prognosticators forecast another recession because of the tax increases and sharply curtailed federal spending that will occur. Any federal solution that does deal with it, whether temporarily or permanently, will likely involve some combination of tax increases, through rate increases and/or elimination of tax deductions, as well as federal spending reductions. These "cures," however, may also have a depressing effect on the still fragile national economy, albeit less so than going over the cliff. Any adverse impact will likely cascade downward to the states and their local governments. The current level of near-term potential economic uncertainty may be unprecedented.

Given the uncertainty of the current and immediately foreseeable economic climate, the evidence compels the conclusion that, at the present time, Union's wage scale position for 2013 is not appropriate.

Accordingly, on the evidentiary record presented, the finding must be that the Employer's ability to pay for the Union's 2013 wage scale position is sufficiently precarious that it should be the determining consideration. The available evidence simply does not present a compelling case for more than a 1% increase. If events unfold more positively than it currently appears they might, a case may be made for "catch-up" provisions going forward.

AWARD ON ISSUES 1 AND 2

Employer's positions are Awarded.

ISSUE 3. THE EMPLOYER'S HEALTH INSURANCE CONTRIBUTION FOR 2012.

The respective positions of the parties are as follows:

<u>Union Position</u>	Retain Employer contribution numbers from the 2011 contract.
<u>Employer Position</u>	Effective January 1, 2012, the Employer will contribute up to the maximum amount shown for the following coverages:
	Family \$1,022.42
	Employee + spouse \$ 826.11
	Employee + children \$ 826.11
	Single \$ 587.00

ANALYSIS AND FINDINGS ON ISSUE 3

The Employer maintains three health insurance plans. For want of better terminology, they are referenced as they were during the hearing: The Base Plan, which is a \$30 copay plan with a coinsurance split of 90%/10%; The "Cadillac" Plan, which is a \$30 copay only; and a High Deductible Plan with an IRS-approved Health Saving Account ("HSA") feature. Each of the three plans provides for the four coverage options shown in the Employer's position. The option for

Employee + Spouse has been slightly more expensive than the Employee + Children option. The Employer's position for 2012 would provide the same contribution amount for both of these options.

The Employer's position for 2012 represents an approximately 16% percent decrease from the contribution amounts it paid under the parties' 2011 collective bargaining agreement. The Employer belongs to a consortium of cities that solicit bids from health insurance providers. For 2012, the Employer was pleasantly surprised to learn that the winning bid actually came in approximately 16% lower in cost with an added feature that limited the amount that premiums could increase for the subsequent four years.

The unanticipated 16% cost reduction led the Employer to establish a temporary contribution plan for 2012 while collective bargaining negotiations and/or interest arbitration took place. That temporary contribution plan apparently led to a grievance that was pending a separate arbitration award at the time of the instant hearing. No other details about that grievance were provided. It appears, however, from Employer Exhibit 65, that some recoupment of Employer contributions will be undertaken with some employees if the Employer's position is awarded.

The Employer contends that the parties have had a long history of sharing costs for health insurance with its employees. Consequently, the Employer maintains that cost reductions should be shared as well. Thus, the Employer's position realizes savings which are shared with the members of the bargaining unit.

The Employer's evidence also described how the Union's position could result in an excess contribution situation for some employees who have selected the High Deductible Plan with the HSA feature.

The Employer's evidence showed that the Public Works bargaining unit accepted the same cost savings sharing proposal for 2012. In addition, the sharing arrangement was applied to the Employer's non-unionized employees. In this regard, the Employer contends that interest arbitrators have shown a strong history of maintaining internal consistency on fringe benefit arrangements.

Externally, the Employer's evidence showed that its proffered 8-city comparison group has average contributions for Family and Employee + Spouse coverage that are below what the Employer would be paying under its proposal for 2012. While the Employer's contribution for Single coverage is below the 8-city average, the Employer's position still absorbs 100% of the cost.

Detailed examination of the evidence shows that the Employer has, since 1995, provided the same health insurance contribution amounts to all of its employees, whether union or non-union. Data for the instant bargaining unit depict the cost sharing percentages between the Employer and the employees since 2004. Although the percentages have varied somewhat from year to year, the variations are not extensive. The 8-year average (2004-2011) Employer contribution for Family coverage is 66.16% with a high of 68.4% in 2010 and a low of 62.9% in 2007. The average for Employee + Spouse is 68.00% with a high of 70.6% in 2004 and 2005 and a low of 64.9% in 2007. The average for Employee + Children is 71.98% with a high of 74.7% in 2004 and 2005 and a low of 68.7% in 2007. For the 8 years shown, the Employer has always paid 100% of the Single coverage cost.

The Employer's proposal for 2012 would contribute 67% of the Family coverage cost. This is slightly above the 8-year average and within the 8-year range of contribution percentages. The Employer's proposal for Employee + Spouse is also 67%, which is 1% below the average but well within the historical range of contribution percentages. The same is true for Employee + Children. The Employer's proposal would contribute 70.4% of the cost, which is nearly 2% below the average but still well within the historical range. As previously noted, the Employer's proposal would pay 100% of the Single coverage premium.

The undersigned concurs that internal consistency for health insurance fringe benefits should be maintained unless a compelling case can be made for departing from that standard. No such compelling case is demonstrated here. In addition, the Employer's proposal compares favorably with its proffered external comparison group. Finally, the sharing of cost savings the Employer is proposing for 2012 is consistent with the level of cost sharing it has provided in the relevant past.

AWARD ON ISSUE 3

The Employer's position is Awarded.

ISSUE 4. THE EMPLOYER'S HEALTH INSURANCE CONTRIBUTION FOR 2013.

The respective positions of the parties are as follows:

<u>Union Position</u>	Retain Employer contribution numbers from the 2011 contract.
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Employer Position Effective January 1, 2013, the Employer will contribute up to the maximum amount shown for the following coverages:

Family	\$1,091.09
Employee + spouse	\$ 880.00
Employee + children	\$ 880.00
Single	\$ 637.00

ANALYSIS AND FINDINGS ON ISSUE 4.

The evidence of record provides a paucity of guidance for 2013. There are no meaningful external comparisons to examine and, internally, no other groups have settled for the year.

The Union's position would result in Employer contribution percentages that exceed the respective highest points of the historical percentage ranges for the plan options. Moreover, it is not clear that the potential excess contribution situation would not again surface with HSAs. Therefore, a persuasive rationale for the Union's position has not been established for 2013.

However, the same may be said about the Employer's 2013 position. While premiums for 2013 reflect an increase of approximately 8.5%, the contribution numbers proposed by the Employer do not keep pace; they lower the Employer's contribution portion by more than 1% for each of the four options except single coverage. For 2012, the Employer contributed to the costs as follows:

Family	67.0%
Employee + Spouse	67.0%
Employee + Children	70.4%
Single	100%

For 2013, the Employer proposes to reduce its proportionate contribution to the following rates:

Family	65.9%
Employee + Spouse	65.8%
Employee + Children	69.1%
Single	100%

Except for single coverage, the 2013 Employer contribution percentages also fall below the respective 8-year averages described in the discussion of Issue No. 3, although they do exceed the low point of the respective 8-year percentage ranges.

Without a persuasive rationale for the Employer's position for 2013, its proposed contribution numbers appear to be somewhat arbitrary. If the Employer's proportionate shares were

appropriate for 2012, and were accepted by IUOE Local 49 and extended to non-union employees as well, one must ask why those same percentages would not also be appropriate for 2013? The record does not provide a meaningful explanation for why they were not continued. Accordingly, some adjustment is in order.

Given the state of the evidentiary record, the finding is that the Employer should bear the same proportionate shares of health insurance costs as it did in 2012.

AWARD ON ISSUE 4

Subject to the correction of any math errors, the Employer's health insurance contributions for 2013 shall be as follows:

Family	\$ 1,109.33
Employee + Spouse	\$ 896.33
Employee + Children	\$ 896.33 ³
Single	\$ 637.00



Gerald E. Wallin, Esq.
Arbitrator

November 17, 2012

³Employer Exhibit No. 66 shows that the two "Employee +" options have historically received the same contribution amount despite a slight difference in premium cost.