

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Minnesota Teamsters Public and
Law Enforcement Employees Union, Local No. 320

Union

-and-

BMS Case No. 12-PN-0380
Detention Deputies/911 Dispatch/TAC Officer

Carver County, Minnesota

Employer

ARBITRATOR: Christine D. Ver Ploeg

DATE & PLACE OF HEARING: December 5, 2012
Carver County Government Center
Chaska, Minnesota

DATE OF RECEIPT OF POST-HEARING BRIEFS: December 20, 2012

DATE OF AWARD: January 7, 2013

ADVOCATES:

For the Union
Halla Elrashidi
IBT Local No. 320
3001 University Ave. S.E.
Minneapolis, MN 55414

For the Employer
Pam Galanter
Madden Galanter Hansen, LLP
505 North Highway 169, Suite 295
Plymouth, MN 55441-6444

INTRODUCTION

This interest arbitration has been conducted pursuant to Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 (hereinafter the Union) is the exclusive representative of approximately forty law enforcement personnel who are employed by the Carver County Sheriff's Department (hereinafter Employer). The bargaining unit is comprised of twenty-nine Detention Deputies, twelve 911 Dispatchers and one Terminal Agency Coordinator ("TAC") Officer.

The parties have been covered by a collective bargaining agreement that has now expired. The parties participated in negotiations and mediation 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 has certified 14 issues to binding interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 7. The following eight issues remain to be determined.

1. Severance – Amount of Severance Per Year – Article 12.1 and Article 12.2
2. Uniforms – Amount of Uniform Allowance – Detention Deputies – Article 17.1
3. Uniforms – Amount of Uniform Allowance – Dispatcher/TAC Officer – Article 17.2
4. Wages--Wage Increase, if any, for 2012 – Article 18.1
5. Wages--Wage Increase, if any, for 2013 – Article 18.1
6. Wages – Is a Market Adjustment Warranted for 911 Dispatchers –Appendix A
7. Wages – Amount of Shift Differential – Article 18.5
8. Wages – Should Step/Range Movement Occur – Article 18.6

The parties and this arbitrator met for a hearing on these matters on December 5, 2012. The parties then submitted post-hearing briefs which were received on December 20, 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).

Applying interest arbitration standards to Carver County and these bargaining unit employees

A. Economic Factors

The issues now to be decided are economic issues, and as such it has been appropriate to consider the County's overall financial health. The Union argues that the County can afford to fund its proposals for these employees, and the evidence demonstrates that is true. However, it is also true that the County's financial situation is not as robust as the Union has asserted.

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 County, like virtually all public sector employers in Minnesota, has in recent years experienced economic stresses and has been forced to undertake painful steps to maintain mandated services and stay within its budget.

Union position: The Union argues that the County clearly has the ability to pay the total estimated cost of its proposals. The County's most recent annual financial report indicates that as of December 31, 2011, the County enjoyed a combined ending fund balance of \$57,816,295. Of that amount \$ 22, 211,772 is unassigned. This unassigned fund balance of 46% is at the high end of the State Auditor's recommendation that counties maintain a 35% – 50% unreserved fund balance. Since 2009, the County has successfully maintained the highest bond rating of AAA while continuously reducing tax levies. In 2012, the County reduced its levy by 3%, and officials have boasted that tax levies will again be reduced in 2013. This will make eight consecutive years of tax levy reductions.

In short, the County enjoys excellent financial health. The County's ongoing reduction of tax levies coupled with its ability to nevertheless maintain excellent unassigned balances clearly indicates an ability to pay. Indeed, both the County Attorney and the County Sheriff have each been awarded 4.35% wage increases.

County position: the County argues that it has been hit hard by the stagnant national economy and the State's budget deficits. The County has a declining tax base from which to increase revenues: since 2008 home values have declined by 20%. Since 2009 state aides to the County were reduced by a total of \$4,477,115, and future state aid remains uncertain. The State is

facing a significant budget shortfall for its next biennium and the State will likely again look to cuts in both County Program Aid and Local Government Aid as a way to solve its budget shortfall. In addition, the County's investment income has declined significantly due to low interest rates; the amount currently budgeted is \$2.9 million less than in 2007. The Sheriff's Department has also lost revenue.

The County has taken several steps to address the dramatic reduction in revenue, including approving voluntary unpaid leave and voluntary early retirement plans, freezing general wage adjustments and step increases in 2010, and implementing a soft hiring freeze whereby all vacant positions must go through a formal process to determine if they need to be filled. At the same time the County reduced its 2011 designated fund balance from 40% to 37%, and its unreserved fund balance has declined from 53.4% at the end of 2009 to 45.0% at the end of 2010. The County further notes that fund balances must be relatively large at the end of the year because those balances must carry the County until it receives its first property tax payments in May and state aid payments in July. Carver County, like all counties, must maintain an appropriate cash flow.

The County submits that the total cost of Union's final proposals is \$488,202.67 in new money for 2012 and 2013.¹ This amount includes costs such as PERA and FICA which the County is legally required to pay, but it does not include longevity pay of 5.0% nor the compounding effect. Nor does this amount include the significant overtime costs the County incurs with these employees. Thus, the County submits that its estimate is conservative.

Discussion: While it is evident that the County could fund the Union proposals, those proposals cannot be considered in a vacuum but must be weighed in the context of its overall financial condition. Although the Union has demonstrated that the County does have the ability to fund these discrete proposals, and that the County enjoys a stronger economic picture than many Minnesota counties, the County has offered persuasive evidence that it continues to confront significant financial pressures.

This award has been premised upon the understanding that the County must be financially responsible and its expenditures must be sustainable. This award is also consistent with both internal and external comparisons. The wage award is the same as similarly situated employees

within Carver County will receive, and is consistent with comparison counties' average within range movement of 1.1%

B. 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 generally very relevant.

In this case it has been relevant that the County has a long history of consistent settlements, and interest arbitration results, with all of its bargaining units. The County has offered evidence that its final position in this case is the same as the settlements that have been negotiated with other bargaining unit and with the wage increases granted to non-Union employees.

C. External Comparisons

Carver County's five external comparable counties are: Anoka, Dakota, Scott, Washington and Wright. Carver County is by far the smallest of these counties in terms of population, tax capacity, tax levy, total revenues, and number of households. Wages for employees in this bargaining unit – which are discussed below – are largely competitive and the County has had no difficulty attracting and retaining employees in this bargaining unit.

¹ The Union challenges the accuracy of the County's method of calculating this amount. However, the County correctly noted that the Union's calculations are separated by category while the County's are in the aggregate.

Issues 4 ,5, 6, 8

**Wage Increase, if any, for 2012 and 2013 – Article 18.1
Is a Market Adjustment Warranted for 911 Dispatchers –Appendix A
Should Step/Range Movement Occur – Article 18.6**

County Position:

2012: Effective July 2, 2012, increase the maximum of the wage schedules by 0.5%, and provide a 1.0% wage increase to employees whose wage is within the 2011 range, not to exceed the range maximum.

2013: Effective July 1, 2013, increase the maximum of the wage schedules by 1.25%, and provide a 1.75% wage increase to employees whose wage is within the 7/2/2012 – 6/30/2013 range, not to exceed the 2013 range maximum.

No market adjustment for 911 Dispatchers.

Union Position

Detention Deputies and TAC Officer:

2012: Effective January 1, 2012, a 4.0% wage increase.

2013: Effective January 1, 2013, a 4.0% wage increase.

Dispatchers

Effective January 1, 2012: In addition to the wage increases proposed for the Detention Deputies and TAC Officer, the Union proposes a 7.0% “market adjustment” for 911 Dispatchers currently at the top of the wage scale. .

Step increase

Effective January 1, 2012: All employees who are not at the range maximum shall receive a 4.5% step increase.

Award

2012: Effective July 2, 2012, increase the maximum of the wage schedules by 0.5%, and provide a 1.0% wage increase to employees whose wage is within the 2011 range, not to exceed the range maximum.

2013: Effective July 1, 2013, increase the maximum of the wage schedules by 1.25%, and provide a 1.75% wage increase to employees whose wage is within the 7/2/2012 – 6/30/2013 range, not to exceed the 2013 range maximum.

No market adjustment for 911 Dispatchers.

The Union proposes to increase bargaining unit members' wage schedules by 4.0% in 2012 and 4.0% in 2013. In addition, the Union proposes a 7.0% "market adjustment" for 911 Dispatchers currently at the top of their wage scales, and a 4.5% step increase for all bargaining unit members who were not at the maximum of the wage schedule effective January 1, 2012. The Union submits that this proposal is supported by evidence of the County's excellent financial health, and the internal and external comparisons.

By contrast, the *County's revised final wage proposal* is to increase the wage schedule by 1.0% at the minimum and 0.5% at the maximum effective July 2, 2012, and to increase the minimum by 1.75% and the maximum by 1.25% effective July 1, 2013. The County notes that this proposal is consistent with the negotiated settlements reached with its other bargaining units and also maintains the wage structure established in the parties' 2010 – 2011 collective bargaining agreements. Of the 10 bargaining units in the County, all but the Teamsters units have voluntarily negotiated this identical wage increase. Nor have any step increases been granted to any employee group, including the members of this bargaining unit, since 2009.

Discussion and Decision

General Wage Increase

The preceding discussion has set forth the premises upon which this wage award has been based. This wage award has been the product of a balancing of all of the cost proposals now at issue. In particular, there is no question that this award is consistent with the internal comparisons. This is the 2012 wage increase that will be accorded to all County employees (91%) other than those represented by Teamsters Local 320 (and a few high-level supervisory employees who are not covered by PELRA). For 2013, this is the same as for all settled contracts for units that have not moved to the Pay for Performance compensation system. This award is also consistent with the parties' history of maintaining consistent wage increases within the County. Finally, with this

award the County will also remain competitive within its external comparison group, and this award is appropriate in the current economic climate.

Market adjustment for 911 Dispatchers

The external comparisons fall short of demonstrating a persuasive need to grant this Union proposal. In addition, the Union's argument regarding the Pay Equity Act is misplaced in that the 911 Dispatchers are a balanced class, and the Union's calculations do not include longevity pay.

Step Increases

The County offered evidence that beginning with the contracts effective in 2010, it negotiated a change in the compensation system with all bargaining units. Specifically, prior to that time the County maintained a traditional step structure by which a general wage increase was applied to each step of the wage schedule and employees moved through that schedule by receiving step increases. However, in 2010, in the midst of economic crisis, the County implemented a hard freeze for all of its employees and changed the wage structure to include the following separate components: (1) increases to the wage schedules, and (2) different increases for employees whose wage is were below the schedule's maximum (referred to as "within range movement") and those whose wages were at the schedule's maximum. This was and has remained true; since 2009 no County employee has received a step increase.

The Union asserts that during the parties' 2009 negotiations it initially vigorously protested, but eventually accepted the elimination of step increases in 2010 and 2011 given the financial crisis at that time. However, bargaining unit members always understood – clearly and with good reason – that they were not foregoing step increases forevermore; the freeze applied only to that contract.

At this arbitration the County's Employee Relations Manager acknowledged that a large reason the parties weren't able to agree on the terms of their 2010-2011 contract was because of the Union's strenuous objection to a step freeze. The Union finally agreed to a step freeze only to help the County through a difficult economic time, and on the understanding that the step increases it was foregoing were temporary. Had that not been the Union's understanding, the Union would never have agreed. It would have expected something significant in exchange for a permanently decreased benefit.

Discussion

The parties strenuously disagree whether the parties did or did not agree in 2009 that the elimination of automatic step increases was to be temporary, for one contract only, or permanent. It is clear that Union representatives at this hearing sincerely believe the elimination of the step increases was only temporary. However, the following evidence demonstrates otherwise.

The Union's understanding is based in part on the recollection and notes taken by a Detention Deputy who was present at the negotiations and at this hearing. However, that witness acknowledged that during mediation, when this understanding was presumably reached, she had no idea what the mediator told the County about the Union's position. By contrast, the County's negotiating committee members reviewed their own notes for the 2010 – 2011 contract and there is no reference to a future return to 4.5% steps in 2012 or thereafter. Nor is that their personal recollection of the negotiations. On the contrary, the County – and all of the other bargaining units – understood that the County would no longer provide step increases.

Nor is there any reference to a return to the steps in the parties' Tentative Agreement or in their eventual 2010-2011 collective bargaining agreement. Indeed, no document memorializes any agreement to return to 4.5% steps in 2012. The Union submits that this lack of documentation is explained by the Union's reliance upon past practice – the fact that step increases had never been part of the parties' collective bargaining agreement – and a County Personnel Policy that specifically set forth the 4.5% steps.

However, the County offered evidence that effective March 3, 2008 that Policy was revised to eliminate step increases, and that elimination was reaffirmed in the County's Compensation Plan as revised June 1, 2010. Under these circumstances-- the County's proposal to end step increases and its elimination of that benefit in the County Personnel Policy – it is reasonable to conclude that if the parties had intended to resume step payments in 2012 they would have specifically stated that in their Agreement.

For these reasons I find that the Union's proposal for a 4.5% step increase effective January 1, 2012 for all employees who are not at the range maximum is a new proposal which is not supported by the evidence.

Issue 1: Severance – Amount of Severance Per Year – Article 12.1 and Article 12.2

County Position:

No change

Union Position

The Union proposes to increase the severance given to eligible employees from one half of unused sick leave, 100%, not limited by dollar amount or by years of service after five years.

Award

Employees who have been employed by the County for at least 20 years, and who are otherwise eligible, may contribute the value of 60% of their unused sick leave pursuant to the provisions of Article 12.2. The current provisions will not otherwise be changed.

Parties' positions

The current severance benefit provides two levels of benefits for employees, depending upon their years of service. Employees with at least five years of service are eligible to receive one-half of their unused sick leave to a maximum of \$8000. Employees with at least 20 years of service also receive one-half of their unused sick leave, with no maximum.

The Union submits that its proposal should be awarded based upon both internal and external comparisons. It notes that the current severance benefit for bargaining unit employees who depart employment after 20 years is less than that for any other bargaining unit employee in the County. All other employees on the traditional plan receive 60%, not 50%, of their unused sick leave after 20 years of employment. The County inconsistently grants benefits to similarly situated employees.

Moreover, after 20 years of employment other bargaining unit employees who have switched to the PTO plan receive a 100% payout to a Post Retirement Health Care Savings Plan to a maximum of 700 hours. The Union submits that its final position would achieve consistency with those employees.

Finally, the Union asserts that within the external market comparable employees receive greater benefits than those given to these employees. In short, this proposal should be awarded for this bargaining unit to remain competitive in the marketplace and as an incentive for employees not to use sick leave rashly.

The County submits that these employees' severance benefit must be consistent with employees in other bargaining units who have traditional sick leave and vacation provisions in their contracts, and that none of those bargaining units include a severance benefit equal to the 100% of unused sick leave the Union now proposes. Moreover, the County submits that this issue should not be evaluated based on market comparisons, as the County has a different severance pay program which cannot be compared.

Discussion

I am persuaded that the County's severance pay should be consistent for all employees under the County's traditional sick leave and vacation plans. Thus, employees who have been employed by the County for at least 20 years, and who are otherwise eligible, may contribute the value of 60% of his or her unused sick leave pursuant to the provisions of Article 12.2. The current provisions will not otherwise be changed.

Issues 2 and 3: Uniforms – Amount of Uniform Allowance – Detention Deputies – Article 17.1 and Dispatcher/TAC Officer – Article 17.2

County Position:

No change

Union Position

Article 17.1: *For Detention Deputies*, increase the current uniform allowance of \$550 by \$100 to \$650, and increase the amount authorized to carry over from up to \$200 to up to \$250 from one calendar year to the next. The amount paid to an employee who elects a cash allowance will increase from \$275 to \$300.

Article 17.2: *For Dispatchers/TAC Officer*: the current uniform allowance of \$275 shall be increased by \$50 to \$325 per year. An employee who elects a cash allowance will receive into equal payments and amount increased from \$137.50 to \$162.50.

Award

No change

Parties' positions

The Union submits that this proposal should be awarded based upon both internal and external comparisons. It offered evidence that the current uniform allowance for bargaining unit members is simply insufficient to pay for the required items. The required items, which must be kept in top condition, are expensive and wear out faster than the allowance typically covers. Within the County, deputy sergeants and LELS sergeants have seen their uniform allowance increased from \$670 to \$720. This proposal would bring detention deputies' allowance up to \$650, which is still below the two other Teamster units and greatly below the Deputy Sergeants and LELS Sergeants. This proposal would also restore clothing allowance funds 9/11 Dispatchers and the TAC officer lost in their 2010 negotiations. The Union also submits that the external market, and evidence of the nominal cost of this proposal, support adopting it.

The County submits that the current clothing allowance should be retained. It is significantly greater than that provided in comparable counties, and no other bargaining unit in the Sheriff's office has received an increase of \$100 in their clothing allowance for the 2012 – 2013 contract term. Moreover, there is a significant difference in the amount of the clothing allowance provided to licensed Sergeants and Deputies on the one hand, and non-licensed employees on the other.

Discussion

The current clothing allowance is consistent with that provided to other uniformed County employees. In addition, within the external market it is high for Detention Deputies and low for the 911 Dispatchers and TAC Officer. However, it is also true that in 2010 those latter two classifications gave up a portion of their clothing allowance so that those funds

could be applied to their base wages. They did so at a time when their base wages would otherwise have been frozen. For these reasons, these provisions are not changed.

Issue 7: Wages – Amount of Shift Differential – Article 18.5

County Position:

No change

Union Position

Increase the shift differential from \$.85-\$.95 per hour.

Award

No change

Parties' positions

The Union submits that bargaining unit members' shift differential should be increased by \$.10 to \$.95 per hour. It notes that these positions are 24 hour a day, seven days a week positions, a schedule which is stressful and, especially on the night shift, disruptive. Moreover, night shift schedules work a special hardship on senior female deputies, who often do not get to exercise their seniority rights to choose their preferred shift given State mandates that a female detention deputy be present if there are female inmates. Moreover, the evidence demonstrates that the majority of inmates are booked between 6 PM and 6 AM, imposing additional work on the night shift.

The County submits the current shift differential of \$.85 per hour is reasonable. It is the same amount paid to employees in the licensed Deputy unit and the licensed Sergeant unit. Moreover, the current amount is more than that provided to other bargaining units in Carver County, and is substantially more than the shift differential paid in comparison jurisdictions.

Discussion

I am persuaded that the current shift differential pay should not be changed, as it is supported by both the internal and external comparisons.

AWARD

1. Severance – Amount of Severance Per Year – Article 12.1 and Article 12.2:
Employees who have been employed by the County for at least 20 years, and who are otherwise eligible, may contribute the value of 60% of their unused sick leave pursuant to the provisions of Article 12.2. The current provisions will not otherwise be changed.
2. Uniforms – Amount of Uniform Allowance – Detention Deputies – Article 17.1
change.
3. Uniforms – Amount of Uniform Allowance – Dispatcher/TAC Officer – Article 17.2
No change
4. Wages--Wage Increase, if any, for 2012 – Article 18.1
2012: Effective July 2, 2012, increase the maximum of the wage schedules by 0.5%, and provide a 1.0% wage increase to employees whose wage is within the 2011 range, not to exceed the range maximum.
5. Wages--Wage Increase, if any, for 2013 – Article 18.1
2013: Effective July 1, 2013, increase the maximum of the wage schedules by 1.25%, and provide a 1.75% wage increase to employees whose wage is within the 7/2/2012 – 6/30/2013 range, not to exceed the 2013 range maximum.
6. Wages – Is a Market Adjustment Warranted for 911 Dispatchers –Appendix A
No change
7. Wages – Amount of Shift Differential – Article 18.5
No change
8. Wages – Should Step/Range Movement Occur – Article 18.6
No change

January 7, 2013



Christine D. Ver Ploeg