

**In Re Conventional Interest Arbitration Between
McLeod County, Glencoe, Minnesota
And
Law Enforcement Labor Services, Inc., St. Paul, Minnesota
Decision and Award of Arbitrator
BMS Case No: 12 PN 1191 (Local #297, Licensed Sergeants)**

**Carol Berg O'Toole
Arbitrator**

April 4, 2013

Appearances:

For the Employer:

**Frank J. Madden, Attorney, Madden Galanter Hanson, LLP
Patrick Melvia, County Administrator
Colleen Robeck, Accountant
Mary Jo Wieseler, Human Resources**

For the Union:

**Kevin Hinrichs, Business Agent
Richard Gronlund, Sergeant and Steward
Adam Burnside, Business Agent**

Preliminary Statement

The hearing was convened at 9:06 AM at the McLeod County Courthouse, 830 11th Street East, Glencoe, Minnesota on Thursday, March 7, 2013. The parties involved are McLeod County (Employer) and the Law Enforcement Labor Services, Inc., Local #297 (Union), representing the county's licensed sergeants. The parties presented oral testimony, oral argument and exhibits. The arbitrator found the presentation of the respective positions by the Union and the Employer direct, clear and well-supported. The relationship between the parties appears mature and cordial. Closing arguments

were waived by both parties in favor of the filing of post hearing briefs. Post hearing briefs post marked March 22, 2013, were received by the arbitrator. The arbitrator closed the hearing with the receipt of the last brief by U.S. Mail on March 23, 2013.

Contractual and Statutory Jurisdiction

The Union is the certified bargaining representative for the four essential licensed Sergeants in the Sheriff's Office. The Employer and the Union are signatories to an expired collective bargaining agreement (Agreement) covering the period from December 19, 2010 through December 31, 2011. Union Exhibit 4. The parties were certified for conventional interest arbitration by Commissioner Josh Tilsen of the Bureau of Mediation Services (Bureau) on October 25, 2012. All provisions of the Agreement were successfully negotiated except for four wage issues, all in Article 24 of the Agreement. The parties selected the undersigned arbitrator to resolve the outstanding wage issues. Final positions on the wage issues were timely submitted to the Bureau. The Bureau forwarded the Certification to Arbitration and the items in dispute to the arbitrator on October 25, 2012. The Employer subsequently modified its final position in a letter dated February 25, 2013. Employer Exhibit 10.

Issues

The Bureau certified the following issues to conventional interest arbitration:

1. Wages -- General Wage Increase 2012 -- Article 24
2. Wages -- Range Movement 2012 -- Article 24
3. Wages -- General Wage Increase 2013 Q -- Article 24
4. Wages -- Range Movement 2013 -- Article 24

I will treat these together as the arguments from the parties and my discussion relate to all four items: Wages - Article 24, General Wage Increase 2012 and 2013 and Range Movement 2012 and 2013.

Current Agreement Language

The Agreement provides in Article 24.1, Union Exhibit 4-21, the following: “Employees shall receive compensation in accordance with Appendix A. 24.1.1. The salary range consisting of a minimum and maximum salary set forth in Appendix A will apply. In no event will an employee’s base salary exceed the salary range maximum.” Union Exhibit 4-21. Appendix A is not labeled as such but there is only one additional page beyond the signature page:

“2011 McLeod County Sergeant Pay Plan – Monthly (Salary Employees)

Grade/Step	Minimum	Maximum
22	3943	5278
23	4137	5540
24	4336	5812
25	4557	6102
26	4779	6403
27	5019	6725
28	5268	7062”

The Union

Ability to Pay

The Union argues that the County has “more than adequate resources to support the Union’s wage proposal, and is in outstanding financial health.” Union’s Post Hearing Brief. They point to the County’s money on hand at the end of the year, before receiving any revenue from the state sufficient to cover ten months of operating expense for the

following year, compared to nine and one-half months in 2009 for 2010 and ten and one-half months in 2010 for 2011. The Union states that this is in excess of the recommended maximum of six months. Union Post Hearing Brief.

The Union states that McLeod County's debt limit is about two and one-half percent of the debt limitation allowed by state statute. The Union points to the County's increase in net assets and the County's admission that an increase is a good indicator of improving or declining financial health. Union Post Hearing Brief. The Union argues that the Employer's angst regarding the "exorbitant raises" it gave from 2008 to 2010 is lacking credibility because they waited for two years to ask to reopen the contract to address the issue.

The Union, although conceding that the economy is not robust, painted a very optimistic picture of the national economy. They cited Federal Reserve research that indicated the probabilities of a recession are zero. The Union also argued that the Dow Jones is at an all-time high, the Gross Domestic Product continues to rise, retail sales and auto sales are steadily climbing, commercial and industrial lending by financial institutions are increasing, and employment is steadily rising. Union Post Hearing Brief.

External Market Considerations

The Union argues that its proposal for wages should be based on an external market comparison with Kandiyohi County. The Union maintains that consideration of a group of six counties, namely Brown, Nicollet, Renville, Sibley, Meeker, and Kandiyohi gives "very little direction as to what the external market can tell us about the relative position of the McLeod County Sergeants in the external market". Union Post Hearing Brief. The Union argues that since 2005 the Kandiyohi County Sergeants have been the

highest paid group and McLeod County Sergeants have been the second highest paid group. The Union states further that the pay differential between Kandiyohi and McLeod County has varied between \$10.00 per month in 2010 and 2011 and \$121.00 per month in 2008. They argue that the other five counties exchange positions as to the third, fourth, fifth, and sixth highest paid groups. The Union concludes “that the only stable and relevant factor that can be looked at through the use of a traditional analysis is that Kandiyohi and McLeod are first among equals, and that the only true comparable in this group for McLeod County is Kandiyohi County”. Union Post Hearing Brief. The Union points to the Employer Exhibits, 59, 60, 61, 62, and 63, which shows McLeod County as second in total tax levy, total revenues, expenditures, and number of households. The Union states that the only measure in which Kandiyohi County is not first is median home values.

The Union argued the comparability with Kandiyohi County is more apparent when one examines the actual wages and date of promotion of individuals in both counties. The Union applied its wage proposals and the Employer’s wage proposals to determine how the standing would be affected. “The Union’s proposal of 1.5% general wage increase for each year of the agreement merely maintains the relative standing of McLeod County Sergeants at the **top of the range** compared to their counterparts in Kandiyohi County”. Union Post Hearing Brief. To the contrary, the Employer’s lump sum proposal for the McLeod County Sergeants “erodes their relative standing compared to Kandiyohi County”. Those within the range are paid significantly below their counterparts in Kandiyohi. The Union’s proposal for those within the range keeps them below Kandiyohi. The Union states there are no sergeants in Brown, Sibley, Renville or

Meeker County with the dates of promotion or experience that are close enough to make a valid comparison with Sergeants within the range in McLeod.

The Union argues that McLeod County has historically negotiated wage increases equal to or slightly above the Consumer Price Index. Union Post Hearing Brief. The Union points to Consumer Price Indexes of over two percent every year since 2007 with the exception of the year 2009. The Union states that the current Employer proposal is an attempt to give “back over half” of the four percent gain displayed in Employer Exhibit 55.

Internal Market Considerations

The Union points to the Employer establishing a mixed pattern of wage increases for other employee groups in McLeod County, contrary to what the Employer claims. The Union offered Union Exhibit 25 to prove this: Deputies (MNPEA) settling for one and one-half percent for 2012 and one and three quarters percent for 2013 with a lump sum payout for employees at the top of the range; Corrections Sergeants (LELS, Local 329) settling for one and one-quarter percent in 2012 and one and one-half percent in 2013 with no language pertaining to employees at the top of the range; and, Corrections and 911 Dispatchers settling for one and three-quarters percent in 2012 and two and one-quarter percent in 2013. Other represented groups have cents per hour settlements including: Teamsters Clerical, Teamsters Highway, and AFSCME settled for \$.30 per hour in 2012 and \$.40 per hour increase in 2013 with employees at the top of the range receiving a lump sum payout.

The Union responded to the Employer’s arguments against the Union’s wage proposal citing the inequity it causes between the Sheriff and the Sergeants. The Union

pointed to its own Union Exhibit 26 and the Employer Exhibit 75-82 to show that there are presently many internal inequities in the County's pay system including: the Chief Deputy making \$1425.00 more per year than the Sheriff; two Highway Engineers making \$6905.00 per year more than the County Administrator; one Public Health Agency Coordinator making \$13,998.40 more than an Assistant County Attorney, \$14,277.08 more than the Auditor, and \$11,908.00 more than the Sheriff; and, the Public Health Nurse and County Environmentalist making more than the Sheriff, Auditor, and an Assistant County Attorney. Finally, the Union argued that the Employer's lack of consistency in compensation practices was exemplified by the County Commissioners voting themselves a raise from \$24, 405.00 to \$25,653.00 or a five and one quarter percent increase, not in form of a lump sum. Union Exhibit 27.

Pay Equity Act, Minnesota Statutes Section 471.9981(2004)(Pay Equity Act)

The Union argued in the hearing that the Employer is in compliance with the Pay Equity Act and an analysis displayed in Union Exhibit 29, 30 and 31 shows that the Union proposal has no effect on this status.

The Employer

Ability to Pay

The Employer argues that they are a precarious position because of the County, state and national economy. "The national and state economy struggled in 2012." Employer Post Hearing Brief. Employer Exhibit 20, p. 1 from February, 2013 showed little change in the U. S. economic outlook and slow growth for 2013 expected. The effects of sequestration was also cited as a possible negative effect on the national economy. Post Hearing Brief and Employer Exhibit 20.

Unemployment continues to be a concern with the number of individuals seeking unemployment compensation at 367,000 reported in October, 2012. Employer Post Hearing Brief and Employer Exhibit 14. Of particular concern is state and local companies projecting low earnings or layoffs. Post Hearing Brief and Employer Argument at Hearing.

External Market Comparisons

The Employer argues for the historical comparison group that Arbitrator Miller adopted in County of McLeod and Law Enforcement Labor Services, Inc., BMS Case No. 04-PN-601 (Miller 2004), p. 4. Employer Exhibit 33. This group is comprised of Brown, Kandiyohi, Meeker, Nicollet, Renville, and Sibley County. Employer Exhibit 68-74 show that the traditional second place is maintained with the Employer's proposal.

The Employer also argued that just using one county to compare to, Kandiyohi County, would go against the prior position of the Union as acknowledged in Miller 2004, p. 11. Employer Exhibit 33. The Employer stated that McLeod County ranks below Kandiyohi County in "all demographic comparisons...population, number of households, net tax levy, total revenues, and total expenditures". Employer Post Hearing Brief citing Employer Exhibit 58-62. Finally, the Employer argues that a comparison with only Kandiyohi County is improper because the latter has a totally different wage structure for its sergeants and an adoption of the Employer's wage proposal keeps McLeod in its traditional second place compared with the group of counties adopted by Arbitrator Miller.

The Employer argues that the McLeod County Sergeants "have received general wage adjustments that exceeded the CPI". Employer Post Hearing Brief. The

Employer points to a Consumer Price Index of a minus six tenth of one percent in 2009 when the Sergeants received a four percent increase and general wage increases exceeding the Consumer Price Index by three and nine-tenths percent from 2000 to 2011. Employer Exhibit 55. The Employer points out that these general wage increases don't include the range movement increases. Employer Post Hearing Brief.

Internal Market Considerations

The Employer argues that they have maintained a consistent pattern of wage increases for all of its employees. Employer Post Hearing Brief. Employer Exhibit 44. The Employer points to the seven bargaining units in McLeod County: AFSCME Human Services Unit with 72 members, LELS Non-Licensed Sergeants Unit with five members, MNPEA Correctional Officer/Dispatcher Unit with 21 members, MNPEA Essential Unit with 16 members, Teamsters 320 Clerical Unit with 50 members, Teamsters 320 Highway Unit with 17 members. "All of these units are settled for 2012 and 2013 with a 0.0% general wage increase, \$.30 per hour range movement in 2012 and \$.40 per hour range movement in 2013 or a percentage equivalent." Employer Post Hearing Brief and Employer Exhibits 44 and 47.

The Employer argues that no other employee in McLeod County is receiving the one and one-half percent general wage adjustment the Union is seeking. The Employer argues that any discrepancy in pay between bargaining unit members shown in Union Exhibit 28 is a "direct result of the date each employee was promoted from Deputy to Sergeant". Employer Post Hearing Brief.

Pay Equity Act

The Employer states that the County is currently in compliance with the Minnesota Pay Equity Act. “The Licensed Sergeant classification is a male- dominated class...extremely close to being a predicted pay.” Employer Post Hearing Brief and Employer Exhibit 53. The Employer argues that “Since the Licensed Sergeant is a male-dominated class, Pay Equity does not support the Union’s position”. Employer Post Hearing Brief. They also argue that their proposal would maintain the 34.6% wage differential that has existed between the Sergeant’s salary range maximum and the Deputy’s salary range, the individuals the Sergeant’s supervise. The Union’s proposal would increase the differential to 38.7% in the second year. Employer Post Hearing Brief and Employer Exhibit 54.

Discussion

In making my decision have I considered the criteria arbitrators generally use in impasse arbitration, particularly conventional impasse arbitration: ability to pay, internal considerations, external market conditions, any statutory constraints, in this case, the Pay Equity Act. I have also noted the bargaining history of the parties and attempted to fashion an award the parties might have reached by themselves had they not come to impasse.

Ability to Pay

The parties view the economic outlook totally different: the Union is optimistic that the country, state and county are recovering and warrants its wage proposal. The Employer is much more pessimistic. I found both sides presented quality and credible economic information that was also abundant. I generally view a glass half full and favor

an optimistic outlook. However, part of recovery for all is to be prudent in taking on new, large expenses. With the current history with the state, particularly its failure to support local government, it is especially important to refrain from totally funding salaries that are ongoing with one-time reserves. Although the county has used its reserves to balance the budget in 2003 it is not a practice that can be constantly repeated. The County did not argue that they were unable to afford to pay the Union's requested wage increases. That doesn't mean that they should do so.

External Market Considerations

I believe that it would be folly to compare the Employer to only one county, whether it be Kandiyohi or any one of the others. They are not twins and each has a separate and distinct governance. There would be no need to remain independent of each other if the County simply followed whatever Kandiyohi did. I am sure that each county board would object to that, as would the county residents. More importantly, either the Union or the Employer's proposal retains most of the positioning currently present among the counties and in relation to Kandiyohi in particular.

Internal Considerations

The Union's claim that the County Commissioner's five and two tenths percent increase in its salary justifies its proposal falls when you consider the total yearly salary of each commissioner. In addition, the Employer's argument that no one received a general wage increase cannot be ignored. But two arguments of the Union ring true: one, the increases for all the settled units are mixed, some percentages, some dollar amounts, and; two, the Sheriff versus Deputy positioning is repeated throughout the County with a number of other jobs. I doubt that this particular discrepancy would be

righted in collective bargaining and I am loath to do it here.

Pay Equity Act

The Employer is in compliance and it appears that neither the position of the Union or the Employer, or a combination of the positions, would put the County out of compliance with the law.

Award

I award the Employer's position on a **general wage increase**; that is, none for either 2012 or 2013.

I award the Union's position for **range movement** for the year 2012 of a one and one-half percentage increase within range for all employees below the range maximum effective the first full pay period after their anniversary date. For the year 2013 a one and three quarters percent increase within range movement for all employees below the range maximum effective the first full pay period after their anniversary date.

I award the Employer's position of a **lump sum** of \$.30 an hour payout for those employees at the top of the range effective January 1, 2012 and a \$.40 an hour payout for those employees at the top of the range effective January 1, 2013.

Dated

Carol Berg O'Toole, Arbitrator