

**Before the Arbitrator Nancy D. Powers**

In the Matter of:

City of Stillwater, Minnesota, Employer

Police Sergeants

And

BMS 12PN1088

Law Enforcement Legal  
Services, Local 254, Union

Date: June 19, 2013

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**Appearances**

For the Union:

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For the Employer:

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**Statement of Jurisdiction**

The City of Stillwater and LELS Local 254 engaged in bargaining for a contract covering the Police Sergeants who work for the City. The contract covering the 5 bargaining unit members expired on December 31, 2011. The contract continues by law, until a new contract is either

bargained or imposed by arbitration<sup>1</sup>. The parties were unable to reach a voluntary settlement, so the parties requested arbitration under the Minnesota statutes granting the right to binding arbitration to “essential” employees<sup>2</sup>

The undersigned was selected from a list of arbitrators provided by the Minnesota Bureau of Mediation Services. A hearing was conducted on May 6, 2013. Both parties had an opportunity to present evidence and arguments in support of their respective positions. Post-hearing briefs were filed and the record was closed on May 21, 2013.

Eleven issues were certified by the Commissioner of BMS as “issues at Impasse”<sup>3</sup>.

### **Issues at Impasse**

1. Duration,
2. Wages for 2012<sup>4</sup>
3. Wages for 2013
4. Wages for 2014
5. Health Insurance for 2012
6. Health insurance for 2013
7. Vacation,
8. Holidays,
9. Overtime Pay/Compensatory Time,
10. Court Time,
11. Seniority

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<sup>1</sup> Minn. Stat. 179A, Subd. 4

<sup>2</sup> Minn. Stat. 179A.16 Subd. 2

<sup>3</sup> Minn. Stat. 179A.16 Subd. 3

## **Background Information**

The City of Stillwater Minnesota, the county seat of Washington County, is located on the border with Wisconsin in east central Minnesota, approximately 20 miles east of the Twin Cities metropolitan area.

Washington County is one of seven counties that constitute the Twin Cities metropolitan area. It is in Stanton Group VI of cities of similar size. The population of the City is approximately 18,300. Major employers in the area are ISD #834, two state prisons, and Anderson Window.

The employees of Stillwater who are unionized, are arranged in six bargaining units. Two are non-essential employees. These employees are represented by AFSCME and IUOE and comprise half of the workforce. These units do not have access to interest arbitration unless the City agrees to it. Four are "essential employee" units: Fire, Police, Police Sergeants and Public Managers. Essential employees have the right to go to interest arbitration, if they cannot resolve their contract issues with the City.

AFSCME accepted the City's wage offers for 2012-2014, of 0%, 2% and 2%. The unit also accepted the City's health insurance offers for the three years. IUOE agreed to the City's 0% wage offer for a one-year contract. The City agreed to the Union's proposal to allow employees to

enroll in the Union's health insurance plan at the cost of \$949 per month.

Under the expired contract, the City provided a flat dollar amount (\$849.86) which covered 100% of the single health insurance premium. Employees could use this as partial payment for dependent insurance, too. For 2011, the City covered 100% of the premium increase. The parties have agreed that the City's contribution to health insurance premiums for 2012 will be \$1,101.86. They disagree about 2013 and 2014. The City wants to pay \$20 more per year towards premiums, with language which would add the phrase "for the base plan for employees who elect single coverage". The Union proposes the parties share any premium increase 50-50%.

Only one of the essential units contracts has been resolved. The police officers, represented by LELS obtained a 0%, 3%, 3% wage increase in arbitration. The arbitrator also awarded the City's position on insurance contributions, but rejected a City proposal on adding 'base plan' language to Health Insurance section 21.1 language.

The major economic recession the entire country has experienced since 2008, has had its impact on the City of Stillwater and the State of Minnesota. The Minnesota state legislature has struggled with a \$627 million shortfall for the 2014-2015 biennium. According to the Minnesota Management and Budget report for April of 2012: "America is still recovering from the Great Recession, and the U.S. economy remains

fragile. Real GDP now exceeds the pre-recession peak, but the unemployment rate remains high, with only about 40% of the jobs lost in the economic slump recovered. ...forecasters still expect that it will take until late 2013 or early 2014 before employment returns to the level observed just before the recession began."

The July 2012 report from MMB was more pessimistic about the long-term trend for GDP growth, stating that its macro-economic forecaster was now predicting only a 2.7% average growth in GDP for 2013 and 2014.

The City has made significant, painful economic choices in response to the recession. Since 2008, the City has lost approximately \$2.5 million in state aid, representing 24% of the City's general fund budget. Tax capacity has decreased by 23% over the period 2008-2013. Approximately 1/3 of the property in the City is not taxable and the city has no industrial base to provide tax revenue. Property taxes fund 71% of the City budget. Property taxes have risen to make up for these shortfalls.

In 2010 the City imposed a hiring freeze and reduced FTE's by 26%. Capital purchases were also frozen. Many fees on government services have been implemented.

The City's fund balance at the end of 2011 was 43.7% of budgetary expenditures. The State Auditor recommends an unreserved fund balance of between 35% and 50% or no less than five months of operating

expenditures. The State Auditor does not recommend the use of one-time money to pay ongoing costs. Stillwater enjoys a Aa2 bold rating from Moody's, an indicator that the City is in good financial health.

Recent statistics indicate the housing market in the Twin Cities is beginning to recover. And unemployment is at 7.5%, the lowest in four years.

Both the City and the Union use Stanton Group VI as their comparability group. This group contains cities between 10,000 and 25,000 population.

### **Positions of the Parties**

#### **Duration**

#### **The Union**

The Union proposes a two-year contract 2012-2013. The City wants a three-year contract 2012-2014. There is no strong history or pattern for this bargaining unit or the City's other bargaining units. Efficiency argues for a two-year agreement. The unstable economy, along with the implementation of Obamacare are factors which can be addressed at the end of 2013 rather than 2014.

#### **The City**

The City wants a three -year contract. The Police Officers and Sergeants have been on the same cycle of bargaining since 2004. That pattern should be maintained. If that cycle is broken, whipsaw bargaining will occur. Obamacare changes will not have any effect on health

insurance premiums until 2015. Labor relations stability will be enhanced by a longer term contract.

## **Wages**

### **The Union**

Pay Equity is a non-issue. The City has already agreed to wage increases for AFSCME, Police Officers and Sergeants for 2013 and 2014, ignoring any adverse effect on Pay Equity. To raise it in arbitration in an attempt to “win” its wage proposal is a hollow threat.

The parties have agreed to wage increases of 2% for 2013 and 2014 (if there is a three-year contract). Only the 2012 wage is in play. The Union proposes a 2%, the City 0%.

This bargaining unit has received a 0% increase on only two occasions – 2010 and 2011. The average general wage increase from 2003 was 2.8%.

There is no strong internal pattern for 2012 wages. Three of seven bargaining unit have settled for a 0% increase. Police officers won a 0% increase for 2012, 3% in 2013 and 3% in 2014. In order for Police Sergeants to remain consistent with their employees, a 2% for 2012 is most appropriate. This would mean both groups would get a 6% increase over three years.

Employees in other bargaining units have the ability to cash out unused vacation, which has resulted in many employees being able to increase their income at a time when there were no bargained increases.

External comparisons are an important consideration for Police wages. In a prior arbitration an arbitrator accepted the City's position that a benchmark for deviating from an internal pattern is if wages are 3.2% or more below market. If the City's position is awarded, these employees will be 5% below market. If the Union's position is awarded, the Union will retain its 2011 position of 3% below market.

The City should be compared to Forest Lake, a city of similar size in the Stanton group. If the City's offer is awarded, Sergeants will be 5% below those in Forest Lake.

If the City's position is awarded, the historic separation between Officer and Sergeant pay will be eroded. Since 2007, the separation has been 20%. With a 0% pay increase, the separation will drop to 18.6% and in 2014 will drop to 17.5%.

CPI favors the Union's offer. When the unit received no increase in 2010 and 2011, the CPI was 2% and 3.2%.

### **The City**

The parties have agreed on wages for 2013 and 2014 with a 2% general wage increase each year. Only wages for 2012 remain outstanding. The City has taken drastic steps to decrease expenditures

and increase revenues since 2008. The Union argues that the City's fund balance is an indicator that the City can "afford" the Union's proposal. Fund balances are there for cash flow purpose, not for continuing obligations, such as wages, The amount at the end of the year is to be used to fund expenses until property tax revenues begin to come in in May of the following year.

The cost of the Union's proposal is \$95,451 more than the City's position. Any award beyond what the City has offered will have a significant "ripple" effect on the other two essential employee units.

The CPI should have no impact on the award. From 2000 to 2011, general wage increases exceeded CPI by 7.6%. For 2010 and 2011, the general wage increase dipped below CPI. Other bargaining units agreed to a 0% wage increase for 2012, in spite of the CPI.

Internal consistency is the prevailing and controlling standard used by most arbitrators in Minnesota for determining wage and benefit issues. There is a uniform, voluntary settlement pattern for 2012 wage increases. In addition, the Police unit was awarded a 0% wage increase for 2012 as well.

Pay Equity is also an important internal factor to consider. The City is out of compliance with its underpayment ratio and the statistical significance test. Any settlement above the City's offer will only increase this disparity, since the bargaining unit is a male dominated classification.

The Union presented inaccurate reports on the City's compliance, which the City expressed objections.

External comparisons using DCA Stanton Group VI must consider factors that set Stillwater apart from other cities in the group. Stillwater's population is 96.5% of the average. Its revenues are only 90.6% of the average. Expenditures are greater than the average. There are fewer households than the average, but more people below the poverty level and the average. It is not appropriate to average the group's wages to determine a wage for Stillwater. The City's offer is a maximum wage that is 95.5% of the average maximum wage. Many of the cities in the group have a wage schedule that takes employees years to obtain the maximum wage. At Stillwater, Sergeants have a base rate they are placed at immediately.

Retention is not a factor in this case. All employees in the unit are long-term employees.

### **Health insurance**

#### **The Union**

Since 1993 the City's contribution to the single plan has covered the cost 100% by paying a dollar amount which could be used for single or dependent plan premiums. The City wants to change language so that the 100% premium contribution is limited to an amount equivalent to the "base plan". The City presented no evidence that demonstrated any

problem with this language. If awarded, and the City changed the “base plan”, it would not have to bargain with the Union about the change.

From 1999 to 2010, the City’s contribution for dependent plans has been a set amount for the first year of a contract, and a 50-50 split of any increases for subsequent years. The Union’s proposal continues this pattern.

### **The City**

The main issue is the 2013 and 2014 dependent health insurance contribution amount. The City is proposing a \$1,121.86 per month for 2013 and \$1,141.86 for 2014. The Union proposes that the City pay 50% of any increases in both 2013 and 2014. Internal consistency is the most important consideration in arbitration. Voluntary agreements adopted the City’s contribution position, as did the Arbitrator in the Police arbitration.

The change in the language of section 21.1 would include “base plan”. If the City changed the base plan at some later date, the Union would have the right to bargain any reduction in benefits.

Pay Equity considerations also affect health insurance benefits, when classifications are dominated by a single sex with comparable work value.

### **Vacation**

#### **The Union**

The current contract limits officers to carrying over only 80 hours of vacation at the end of the contract year. Members can't always use up their hours and wind up losing them. Other bargaining units have this right. AFSCME, Firefighters, Manager and Public Works all can cash out any hours exceeding 80. Managers can only cash out 40 hours. Other employees in the Police Department: the Chief, Captain and Secretaries have this benefit and were able to increase their pay accordingly.

### **The City**

Two issues involve vacation: Carryover hours and cash out of vacation hours over 80 hours. All of the other bargaining units are limited to carrying over 80 hours of vacation. The Union seeks to change this language to permit Sergeants to carryover 240 hours. The Union has failed to satisfy their burden to justify a change.

The Union seeks language allowing employees to cash out any vacation exceeding 80 hours. The Police unit did not seek this change. If internal consistency is the ruling factor, then the Union should agree that wages and insurance should also be governed by internal consistency.

### **Holidays**

#### **The Union**

The Union wants to add another floating holiday. Currently, Sergeants get 11 holidays, but are only paid for 10. It would be less costly

for the City to add another floating holiday than to pay for the 11<sup>th</sup> holiday. AFSCME gets 11 paid holidays, plus one floating holiday and is paid overtime for working all 11 holidays. Firefighters get 11 holidays, paid out at 11.2 hours and no floating days. Library gets 11 paid holidays and two floating days. Public Works gets 11.5 paid holidays and get overtime for all worked plus one floating holiday. Police get 11 paid holidays but overtime for only nine if worked, and one floating holiday. There is no internal pattern which would be disturbed by awarding Sergeants another floating holiday.

### **The City**

The Union wants another floating holiday. They currently have 11 holidays plus one floating holiday. No other City unit has 2 floating holidays. The Police unit did not think this issue was important enough to take to arbitration.

### **Overtime pay/Comp Time**

#### **The Union**

The Union proposes to define in contract language that employees be permitted to receive comp time in lieu of paid overtime and be allowed to accrue up to 48 hours. The Union also wants language which permits employees to carry over up to 40 hours of comp time. The City opposes any change. Current language permits the Chief to exercise discretion in permitting both the accrual and carryover of comp time. If

the Union's offer is adopted, the employee and the City would know what number of comp hours could be accrued, as would the amount of carryover. Currently, this amount is unknown. Other bargaining units except the Sergeants and Police can carryover comp time. These employees should be granted that right.

### **The City**

Changes in both the accrual of comp time and carryover of comp time were proposed by the Union. When comp time is taken by police employees, coverage is a complicated issue for the City. Often, the City will have to pay additional overtime to cover a shift when an officer is gone on comp time. The Police unit did not take this issue to arbitration. The Union did not present any evidence that allowing the Chief discretion in permitting the use of Comp Time and in the carryover of Comp Time has been a problem.

### **Court Time**

#### **The Union**

The Union seeks to increase the amount of minimum time an employee is paid to appear in court on their day off from 2 ½ hours to 3 hours at the overtime rate. Police get three hours of guaranteed overtime pay. An arbitrator in the police arbitration in 2008 noted that external comparisons favored three hours when granting the Police request.

#### **The City**

The Union wants to increase the court time minimum guarantee from 2 ½ hours to 3 hours. The Police unit allows 3 hours. Again, if internal consistency is the rule, then the Sergeants should be willing to take the City's wage and insurance offer.

### **Seniority – Shift Bidding**

#### **The Union**

The Union seeks language which would make seniority the default for shift bidding. When police and sergeants were split into two bargaining units in 2001, shift bid language was omitted from the sergeants contract. The Union has been attempting to reinsert the language in the contract since that time. In the 2010-11 negotiations, language on shift bidding was added to the contract, but left to the Chief's discretion whether bidding would be by seniority. The Union's proposal would allow the Chief to disregard seniority if cause exists.

#### **The City**

The Union wants to change the language so that seniority would be used for shift bidding unless cause exists to go outside the seniority list, as determined by the Police Chief. Current language permits the Chief to determine if seniority will be used. The Union's language would subject any deviation from seniority to the grievance procedure with a "cause" standard. The Union offered no evidence of any problems with the clause they voluntarily agreed to in 2010-2011 negotiations.

## Discussion and Conclusions

Minnesota's Public Employment Labor Relations Act provides for conventional arbitration of items submitted for arbitration. The arbitrator has the authority to resolve the issues in dispute. The arbitrator is directed as follows:

In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.<sup>5</sup>

The accepted standard for deciding disputes in interest arbitration in Minnesota is to try to determine, based on the best evidence available, what the parties would have negotiated for themselves in the absence of interest arbitration.<sup>6</sup> The evidence relevant in making a determination is both an internal and external comparison with similarly situated employee units who have negotiated settlements, as well as the bargaining history of the parties and the employer's ability to pay.

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<sup>5</sup> 179A.16 subd 7.

<sup>6</sup> Teamsters Local 320 and Dakota County, BMS Case 11-PN-0466 (Jacobs, 2011).

An arbitrator in an interest arbitration does not ordinarily plow "new ground" for the parties. Parties should work out their problems at the bargaining table whenever possible. An arbitrator can never fully understand the relationship of the parties and their history of negotiations and compromises. If there is a demonstrable problem that can easily be solved with contract language and one or the other party has known about and refused, over time, to address, then arbitration may be the vehicle to bring about a change. The burden of persuasion is on the party proposing a change from current language. Sometimes the parties negotiate a quid pro quo exchange for changes in the agreement. Arbitrators also can make such a change, but the burden on the proponent is high.

It is with these principles in mind that I make the following award.

- 1. Duration.** The parties contract should be for 2012-2014. There is no strong pattern for duration. To award only a two year duration would mean the parties would need to begin bargaining immediately for a 2014 agreement. The Police unit has a three-year agreement. This unit should be in synch with the police unit to facilitate more efficient bargaining.
- 2. Wages for 2012.** The City's position of a 0% wage increase is awarded. The current financial position of the City is still very tenuous, considering the national economy, the state budget restraints and local taxes and

revenues, including declining property tax revenues. None of these factors have shown enough improvement to warrant an increase at this time. Other units (comprising half of the City's employees) have voluntarily settled for 0% increases for 2012. The Police unit was awarded a 0% increase for 2012. Granted, the Police unit has been awarded a 3% increase for 2013 and 2014. By not awarding the Union's position, I realize Sergeants pay differential with Police officers will be somewhat eroded, but not dramatically enough to justify their position.

The City is well managed, but to conclude that their prudent financial decisions can be translated into dictating an increase for Sergeants, is a faulty conclusion. This arbitrator doesn't believe a fund balance in the approved range can be used for on-going obligations. The Union's argument that the benchmark for deviating from an internal pattern is 3.2% below market value, was taken from a statement by the arbitrator in a 2008 arbitration award, before the economy tanked. It is not relevant today with such volatile fluctuations in revenues brought about by the recession. The Sergeants' rank among the Stanton Group will be eroded somewhat. The average increase in the Group is 1.6% for 2012. But, among settled contracts for 2013, the average increase is only 1.8%, below the 2% Sergeants in Stillwater will be receiving.

The history of wages compared to CPI, demonstrates that wages have increased more than the CPI since 2001. But, there has not been a strict correlation between CPI and wages.

Pay Equity will not be impacted by this award.

The City's proposal for a 0% is the most reasonable position and is awarded.

**3. Wages for 2013.** The parties are in agreement that there should be a 2% general wage increase for 2013.

**4. Wages for 2014.** The parties are in agreement that there should be a 2% general wage increase for 2014.

**5. and 6. Health Insurance for 2012, 2013 and 2014.** The parties agreed on the Employer contribution to the premium for the dependent plan for 2012: \$1101.86. The Union proposes that the City shall contribute 100% of the premium for the single plan for 2012-2014. The Union wants the City to contribute the same dollar amount of premium as the prior year, plus 50% of any increase over the prior year's premium, for the dependent plan.

The City agrees to 100% contribution towards single coverage, but wants to provide 100% premium payment for the single "base plan". The City's contribution for dependent coverage would increase \$20 for 2013 and 2014.

The City has failed to satisfy its burden to establish a need to change the language to provide payment for the single "base plan".

They could not explain what the language would mean, or how it would affect employees. If they want the change, they should bargain it.

There is a historical pattern since at least 1999 of a set amount (which covered 100% of the cost of single coverage) contribution in the first year of the contract, followed by the City and the Sergeants splitting premium increases in subsequent years 50-50%.<sup>7</sup> That pattern should not be disrupted here. If the City's position was awarded, Sergeants would take a serious pay cut. Both parties need to explore ways to slow the increase in premiums for health insurance. The City's solution of passing most of unknown increases on to employees is not a reasonable solution to the problem. The Union's position is awarded.

**7. Vacation:** The Union proposed a change in contract language as follows:

Vacation shall accrue on the January 1<sup>st</sup> immediately preceding the anniversary date of employment. An employee may cash out any vacation hours that exceed 80, and must be taken within one (1) year, except that a maximum of eighty (80) hours of vacation may be carried over into the next year. Any vacation time over the allowed maximum carry over of 80 hours shall be forfeited at the end of the calendar year. An employee may carry over vacation hours; however, there shall be a maximum of 240 hours vacation during any one (1) calendar year.

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<sup>7</sup> Except for 2010-2011, when the Union agreed to no wage increase in exchange for the City paying 100% of premium increases.

The City resists any change in current language. The Union has not satisfied its burden of proof on this issue. There is an internal pattern of limiting carryover to 80 hours. Patrol officers have the same language in their contract. Sergeants forfeited only 7.5 hours in 2012. It has not been a problem. It is a benefit the Sergeants want. They should bargain it.

**8. Holidays:** The Union seeks to add another floating holiday. The City resists any change. The Union failed to establish sufficient justification for a change in contract language. Patrol officers did not seek any change in holidays. They only get premium pay for 9 holidays.

**9. Overtime Pay/Comp Time:** The Union proposed the following changes:

13.6 Employees requesting in writing to the EMPLOYER to receive compensatory time off in lieu of paid overtime as established by Section 13.1 of this Article shall be allowed to accrue up to 48 hours of overtime. such compensatory time at a time mutually agreeable between the EMPLOYEE and the Police Chief.

13.7 An EMPLOYEE may carry over up to 40 hours of compensatory time off ~~Carryover of compensatory time off shall be at the sole discretion of the Police Chief. Any compensatory time in excess of 40 hours not taken or not authorized to be carried over by December 31<sup>st</sup> of each calendar year, shall be paid off on December 31<sup>st</sup> of each calendar year that date.~~

The City resists any changes in contract language.

The Union failed to meet its burden to justify need for a change. Allowing carryover of comp time might increase the amount of overtime in order to fill vacant shifts of employees on comp time. The Union

claimed the City didn't explain any negative impacts by granting the Union' s position. The Union has it backwards. They didn't prove any problems with the current contract language which would be solved with this language change. This is a solution in search of a problem.

**10. Court time:** The Union seeks to increase court time from 2.5 to 3 hours. The current 2.5 hours has been in the contract since 2003. Police officers were granted 3 hours in a 2008 arbitration that noted external market comparisons as determinative. External market comparisons indicate an average of 3 hours as well. While, Sergeants don't often have occasion to appear in court, the time should be increased to three hours.

**11. Seniority:** The Union seeks to amend the provision to require seniority to be the default in shift bids. The language change would be:

Shift bids shall be by seniority ~~at the sole discretion of the Police Chief, unless cause exists to go outside the seniority list, as determined by the Police Chief.~~

The City resists any contract change. The current contract language came into the contract in 2010, as a result of a voluntary settlement. The Union has failed to establish any need for a change. There are legitimate reasons for discretion in assignments. No problems have surfaced that would counsel for a change.

## **Award**

The duration of the contract shall be three years: 2012-2014. The parties contract shall consist of any articles already agreed to plus the following changes:

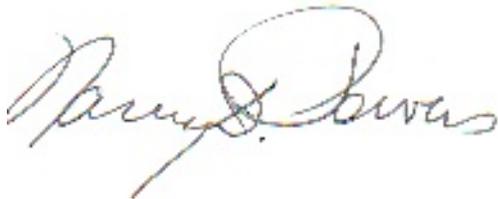
**Wages** : 2012 – 0%.

**Health Insurance:** The language of 21.1 and 21.2 shall be :

21.1 The Employer shall contribute 100% of the premium for the single plan. Effective January 1, 2012, the Employer shall contribute \$1,101.86 for the dependent plan. For 21013 and 2014, the Employer shall contribute the same dollar amount of premium as the prior year, plus 50% of any increase over the prior year's premium, for the dependent plan.

21.2: (Deleted).

**Court time:** The language of 14.1 shall be changed from 2 ½ hours to 3 hours.

A handwritten signature in cursive script, appearing to read "Nancy D. Powers". The signature is written in dark ink on a white background.

Nancy D. Powers  
Arbitrator

June 19, 2013