IN THE MATTER OF ARBITRATION BETWEEN

City of Owatonna,

Employer,

and

Teamsters, Local 320

Union.

INTEREST ARBITRATION DECISION

BMS Case No. 13-PN-0068

Arbitrator:	Stephen F. Befort
Hearing Date:	July 24, 2013
Post-hearing Briefs submitted:	August 15, 2013
Date of Decision:	September 11, 2013
Appearances:	
For the City:	Brandon M. Fitzsimmons
For the Union:	Paula R. Johnston

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.30. Teamsters, Local 320 ("Union") is the exclusive representative of a unit of police officers employed by City of Owatonna ("City"). The unit consists of approximately 23 patrol officers.

The parties previously negotiated a collective bargaining agreement ("CBA") for calendar year 2011. The Union and the City have engaged in negotiations for a successor agreement, but they have been unable to reach an agreement. The Bureau of Mediation Services

("BMS") certified 32 unresolved issues for interest arbitration. Three of those issues have now been withdrawn or resolved.

DISCUSSION AND AWARD

INTEREST ARBITRATION STANDARDS

1. **Replicate Voluntary Agreement**. The central goal of interest arbitration is to ascertain the agreement that the parties themselves would have reached if they had continued bargaining and concluded a voluntarily negotiated settlement. *See* AFSCME Council 65 and County of Carver, BMS Case No. 10-PN-423 (Fogelberg, 2011).

2. **Criteria for Determination**. In general, arbitrators consider the following factors in determining interest arbitration awards: the employer's ability to pay and other economic considerations, relevant internal comparisons, and relevant external comparisons. Since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991 - 471.999, the principal, but not exclusive, factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to the other bargaining units in the same jurisdiction. *See* e.g., Law Enforcement Labor Services, Inc. and McLeod County, BMS Case No. 03-PN-613 (Kircher, 2003); Law Enforcement Labor Services, Inc. and Chisago County, BMS Case No. 95-PN-54 (Berquist, 1995).

3. **Burden on Proponent for Change**. As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden on the party proposing a change in the parties' relationship to demonstrate the need for such change by clear and

compelling evidence. *See* Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin, 1997).

ISSUES FOR RESOLUTION

This proceeding involves 29 disputed issues. The decision first will address the matter of wages and then the remaining issues in the numerical order of certification.

27.-32. Wages

A. Final Positions

i. City

a. Increases

1. 2012-2014

- No general wage increase

b. Effective date of any increases

1. 2012

- Effective date of any raise - December 31, 2012.

2. 2013

- Effective dates of any raises - January 1, 2013 and July 1, 2013.

3. 2014

- Effective date of any raise - January 1, 2014.

ii. Union

a. Increases

1. 2012

- 3% general wage increase

2. **2013**

- 3% general wage increase

3. **2014**

- 3% general wage increase

b. **Effective date of any increases**

1. **2012**

- Effective date of any raise - January 1, 2012

2. **2013**

- Effective dates of any raises - January 1, 2013

3. **2014**

- Effective date of any raise - January 1, 2014

B. Discussion

Union Arguments

The Union contends that the County has the ability to pay the requested salary adjustments based upon the healthy size of the County's unrestricted fund balance (63.7% of general fund expenditures), the improving economy, and the projected 2014 increase in Local Government Aid (LGA). The Union points out that none of the City's other bargaining units settled for a wage freeze for 2012 or 2013. The internal pattern for both represented and non-represented employees is a 1% increase as of January 1, 2012, a 1% increase as of January 12, 2013, and a .5% increase as of July 1, 2013. The Union argues that the police unit deserves a settlement more favorable than the internal pattern because of a significant retention problem and the fact that unit employees are further below comparable external averages than are the City's two other law enforcement units. In terms of external comparisons, the Union advocates for a

comparison group of cities that include Albert Lea, Austin, Faribault, Northfield, and Winona. This is the comparison group recognized in a 2008 interest arbitration award issued by Arbitrator Bernadine Bryant, and the Union maintains that there is no reason to deviate from that comparator group in this proceeding. The Union claims that unit employees currently are paid below the average of the external comparable cities and that the City's proposed wage freeze for 2012 would result in Owatonna officers being paid approximately six percent below the external average. The Union further maintains that its proposed three percent adjustment for 2012 still would leave the unit employees below the external pattern.

City Arguments

The City contends that it has experienced significant budgetary problems during the period of the Great Recession including a declining tax capacity and significant cuts in state aids, contributing to an overall 14.45% decrease in the City's general fund revenues from 2007 to 2012. The City asserts that both the general economy and public sector budgets continue to be stressed and likely will remain in that condition for the foreseeable future. The City urges that the determinative factor relied on by most Minnesota interest arbitrators with respect to wages is internal consistency. In that respect, the City points to an internal pattern that is well below the wage adjustments sought by the Union. In terms of external comparisons, the City argues that Northfield should not be considered as a comparator city because of the small size of that city's police force and the fact that a portion of that city is located within a metropolitan county. The City maintains that its wage proposal for 2012 would maintain Owatonna's ranking in second place among the remaining comparable cities in terms of total compensation (*i.e.*, including benefits), while the Union's proposal would place Owatonna nearly twice above average as compared to 2011.

C. Analysis

Economic Considerations

The Union is correct in contending that the County has the ability to fund the Union's wage proposal and that the economy is starting to improve. Nonetheless, the current economic recovery is weak, and local government finances remain in a precarious position. Local government units typically experience a time lag in rebounding from a period of recession, and budgetary projections for the next few years still show red ink. These circumstances warrant a cautious approach to future expenditures for personnel costs.

External Comparisons

The parties disagree as to the appropriate external comparison group of cities for this arbitration. The Union urges a comparison group consisting of the following five cities: Albert Lea, Austin, Faribault, Northfield, and Winona. The City contends that Northfield should be excluded from this group because of the smaller size of its police force and because a portion of Northfield is situated in a metropolitan county (i.e., Dakota County). The Union disagrees, asserting that arbitrator Bryant recognized those five cities as the appropriate external comparators for the City of Owatonna in a 2008 interest arbitration decision based upon similarities in geographical location and population. I agree with the Union's position on this issue and conclude that the geographical extension of a tiny portion of Northfield into rural Dakota County should not be a disqualifying factor.

With Northfield included in the comparator mix, the Owatonna police officers currently are paid at a rate somewhat below the external average. An award of the City's proposed wage freeze for 2012 and 2013 would widen this gap, while an award of the Union's position would

come close to eliminating the gap entirely by 2013. An award that replicates the City's internal pattern would leave the unit officers below the external average, but without widening the gap.

The wage adjustments provided to police officers by the comparable cites essentially mirrors the City's internal pattern adjustments for 2012 and 2013. The average external wage increase was 1% in 2012 and 1.67% in 2013.

Internal Comparisons

Most Minnesota arbitrators view internal consistency as the most important consideration in determining wage adjustments. This view dominates for two principal reasons. First, an award consistent with an existing internal wage pattern most often replicates the bargain that the parties would have struck through a voluntarily negotiated agreement. Second, an award that deviates from an internal pattern is likely to set off an undesirable ripple effect in future rounds of bargaining.

In this instance, a clear internal pattern has been established. Each of the City's represented units, as well as the non-represented employees, will receive a 1% increase as of January 1, 2012, a 1% increase as of January 12, 2013, and a .5% increase as of July 1, 2013. The City, which has proposed a wage freeze for both years, has not advanced any argument explaining why a wage adjustment lower than the internal pattern is warranted. The Union, on the other hand, claims that a higher wage adjustment is appropriate because the police officers lag further behind external comparisons than do the City's other two law enforcement units and because the City's police department has a serious retention problem. The City disputes the latter contention.

In the end, I do not believe that the evidence warrants an outcome that would deviate from the internal settlement pattern. An award of the internal pattern for this unit would foster internal consistency in wage adjustments and promote labor stability.

C. Award: The internal pattern is awarded for both the amount and the timing of wage increases for 2012 and 2013.

1. Duration

A. Final Positions

i. City

- Two year CBA, January 1, 2012 through December 31, 2013

ii. Union

- Three year CBA, January 1, 2012 through December 31, 2014

B. Discussion

The Union contends that a three-year contract term is desirable in order to avoid an almost immediate return to the next round of negotiations. The Union's post-hearing brief asserts that "a period of labor peace is necessary in order for the parties to have a harmonious and productive working relationship."

The City points to the fact that representatives for each of the City's other four bargaining units have agreed to a CBA that is in effect for a two-year period beginning January 1, 2012. The City urges that uniformity in CBA duration is imperative in order to promote budget certainty and bargaining efficiency.

I agree with the City's position that a uniform pattern of contract lengths will more likely promote internal consistency in terms and conditions of employment and minimize the disruptive impact of whipsaw bargaining.

C. Award: The City's position is awarded.

3. Grievance Procedure

A. Final Positions

i. City

- Expressly provide for mediation of grievance by mutual agreement by adding the following language:

Section 6.4 Procedure

Grievances, as defined by Section 6.1, shall be resolved in conformance with the following procedure:

. . . .

Step 3A. If desired by the Union, the Union may submit a written or electronic request to the Employer-designated Step 3 representative to mediate the grievance. The grievance shall be mediated if agreed to by both parties. A grievance not resolved in Step 3A within ten (10) calendar days following the Employer-designated representative's written refusal to mediate or completion of mediation as designated by the mediator may be appealed to Step 4. Any grievance not appealed in writing to Step 4 by the Union within ten (10) calendar days shall be considered waived.

Step 4. A grievance unresolved in Step 3 or Step 3A and appealed to Step 4 by the Union shall be submitted to arbitration subject to the provisions of Minnesota Statutes, Section 179A.21. The selection of an arbitrator shall be made in accordance with the "Rules Governing the Arbitration of Grievances," as established by the Public Employment Relations Board.

ii. Union

- No change

B. Discussion

Looking internally, a similar mediation step is included in the Operating Engineers CBA, but not in the CBAs adopted for the Sergeant and Corporal units. Among the external

comparable cities, Faribault and Winona have negotiated a mediation step for their police officers.

The City argues that its proposal will facilitate the beneficial use of mediation in resolving disputes and will preempt potential uncertainties by clarifying the process and timing of mediation. The Union responds that the parties already have the ability to agree to use mediation and to waive the timelines specified in the grievance procedure.

On balance, the City has not established a compelling basis to support this change in contract language.

C. Award: The Union's position is awarded.

4. Hours of Work - Work Day

A. Final Positions

i. City

- Change normal work day to 8 to 12 hours by changing the CBA to read as follows:

  Section 8.2 The normal work day shall consist of ~~ten (10)~~ eight (8) to twelve (12) hours.

ii. Union

- No change

B. Discussion

The City maintains that the proposed language would promote flexibility in determining the length of the normal work day and better accommodate the financial and operational needs of the City. The City points out that the Sergeant and Corporal CBAs contain language stating that shifts shall be eight or ten hours in length. Three of the externally comparable CBAs also provide for some flexibility in establishing the length of work shifts.

The Union submitted evidence showing that the current ten hour work day language has remained in the parties' contract since 1991. The Union claims that the City's proposals on this issue and the related overtime article represent an attempt to greatly reduce the ability of unit employees to earn overtime.

While the City's arguments on this issue are not without some merit, they do not provide a compelling basis to support the proposed substantive change in contract benefits. In addition, it is unlikely that the Union would have agreed to such a provision as the result of voluntary negotiations.

C. Award: The Union's position is awarded.

5 - 6. Call Back and Court Cancellation Pay

A. Final Positions

i. City

- No change

ii. Union

- Increase minimum call back pay from two to four hours for each call back in Section 8.4.
- Increase minimum compensatory time for late court cancellation notices from two to three hours.

B. Discussion

The parties' expired contract provides for a minimum of two hours of straight time pay for a unit employee who is called back to work during off-duty hours. That contract also guarantees two hours of compensatory time for a unit employee who has a court appearance cancelled after 5:00 p.m. on the day before it is scheduled.

The CBAs for the City's two other law enforcement bargaining units also provide for a two hour minimum pay for a call back and two hours of compensatory pay for a late court cancellation. Each of the comparable cities provides a minimum of two hours of call back pay, but at a time and one-half rate. Similarly, each of the comparable cities provides a minimum of two hours at a time and one-half rate for late court cancellations.

In negotiations for the 2006-2008 CBA, the parties agreed to change the call back pay rate from a time and one-half rate to a straight time rate of pay in exchange for modifying court appearance cancellation compensation from pay to compensatory time off. Having voluntarily struck this deal, the Union has not shown a compelling interest to substantiate the need for an increase in both types of compensation.

C. Award: The City's position is awarded on both issues.

7. Overtime

A. Final Positions

i. City

- Make language consistent with federal Fair Labor Standards Act by changing the CBA to read as follows:

  Section 9.1 Hours of work in excess of ~~an employees normal work day of ten (10) hours per day, and in excess of an average of forty (40) hours per week in any six (6) week period,~~ <u>one hundred and seventy one (171) hours per twenty eight (28) day work period</u> shall be compensated at the rate of one and one half (1½) times the employee's regular straight-time rate of pay.

ii. Union

- No change.

B. Discussion

The current contract language entitles unit employees to overtime pay for work in excess of ten hours per day or 40 hours per week. The City proposes language that would mirror the minimum overtime pay requirements of the Fair Labor Standards Act, which entitle public safety officers to receive overtime pay for work in excess of 171 hours over a 28 day work period

In terms of internal comparables, the CBAs applicable to the Corporals, Sergeants, and Operating Engineers provide for overtime pay under terms consistent with the current version of Section 9.1. External comparables are mixed, with some CBAs providing for overtime measured over a period of fourteen days and others doing so with respect to a measuring standard of 2080 hours per year.

The Union objects to the City's proposal arguing that the current language has been in existence since 1991 and that the City's proposed language would drastically curtail the ability of unit employees to earn overtime pay. The City has not carried its burden to establish the need for such a change in this substantive benefit.

C. Award: The Union's position is awarded.

8 - 9. Compensatory Time

A. Final Positions

i. City

- Add language that maximum earned can be no more than 80 hours in a calendar year by changing the CBA to read as follows:

  Section 9.3 Employees have their choice of overtime or compensatory time off as approved and regulated by the Police Chief. The maximum accumulation <u>and amount earned in a calendar year</u> to be no more than 80 hours.

ii. Union

- Increase comp time maximum accumulation from 80 to 120 hours (i.e., by 50%) in Section 9.3.

- Add CBA language establishing a comp time cash out provision on specific dates.

B. Discussion

Unit employees under the most recent CBA may accumulate up to 80 hours of compensatory time with no annual limit. Both parties request changes to this practice. The Union seeks to increase the maximum accrual level to 120 hours and to authorize employees to cash out comp time banks twice a year. The City's proposal is to expand the 80 hour limitation into an annual cap on compensatory time accrual.

Each of the City's other CBAs mirror the unit contract in providing a comp time maximum accumulation of 80 hours, but without any annual accrual maximum or any language addressing the cash out of accumulated comp time. The majority of external comparables cap comp time accumulation at 80 hours or less.

The City contends that the issue of cashing out accumulated compensatory time is a non-arbitrable management right based upon the Supreme Court's holding that: "the FLSA permits the employer at any time to cancel or 'cash out' accrued compensatory time hours by paying the employee cash compensation for unused compensatory time. §207(o)(3)(B); 29 CFR §553.26(a) (1999)." *Christensen v. Harris County*, 529 U.S. 576 (2000). While that holding authorizes public employers to cash out banked comp time as they see fit, this prerogative does not remove such a benefit from the realm of negotiable terms and conditions of employment under Minnesota's Public Employment Labor Relations Act (PELRA).

In the end, neither party has made a compelling case for their proposed changes on this topic. Accordingly, the current language should be retained.

C. Award: Retain current language.

11. Seniority in Scheduling Vacations

A. Final Positions

i. City

- Make consideration of seniority permissive in scheduling vacations by changing the CBA to read as follows:

  Section 10.4 Department heads shall <u>may</u> consider seniority in scheduling vacations, but vacations will not be permitted to interrupt service to the community

ii. Union

- No change

B. Discussion

The City proposes to change the language regarding vacation scheduling from stating that the City "shall consider seniority" to language stating that the City "may consider seniority." The City argues that such a change will promote flexibility and enable the City to make scheduling decisions based upon other factors such as operational needs and personal circumstances.

The Union claims that the current language of section 10.4, requiring that the City "shall" consider seniority in making vacation scheduling decisions, has been a part of the parties' CBA since 1977. Three of the City's other four labor contracts contain the language sought to be retained by the Union.

Given the longstanding importance of seniority in the parties' relationship, the City has not demonstrated an adequate need to deviate from this arrangement.

C. Award: The Union's position is awarded.

12 – 17. Holidays

A. Final Positions

i. City

- Eliminate Section 10.5 by changing the CBA to read as follows:

~~Section 10.5 A paid holiday occurring during an eligible employee's vacation will add a day to the employee's vacation period.~~

- Clarify that city recognizes actual holiday by changing the CBA language to read as follows:

  Section 12.1 ~~All regular employee shall receive the following paid holidays~~ The City recognizes the following holidays on their actual day:
  . . .

- Provide a holiday leave bank of 88 hours as of January 1st by changing the CBA to read as follows:

  Section 12.2 ~~All employees shall work holidays scheduled. Vacation and Comp requests shall be treated as regular requests.~~ On January 1 of each calendar year, employees shall receive 88 hours in a holiday bank. Holiday bank time may be used for paid time off. The Chief of Police must approve all requests to use hours in this holiday bank as paid time off. If an employee requests paid time off on the actual holiday day, they must use holiday bank time to the extent the employee has such time in his or her bank. Any unused holiday bank time remaining as of December 31 of the calendar year will be cashed out. In the event an employee separates from employment in any capacity, the cash out of time in his or her holiday bank will be prorated based on the calendar month in which he or she separates from employment.

- Clarify holiday pay based on proposed change to 12.1 by changing the CBA language to read as follows:

  Section 12.3 A regular employee who works on any of the ~~above-mentioned holidays~~ actual holiday days in section 12.1 shall receive~~, in addition to the holiday pay provided by 12.1,~~ pay at the rate of one and one-half (1½) times his/her regular straight-time hourly rate for all hours worked on such holiday.

- Eliminate by changing the CBA language to read as follows:

  ~~Section 12.4 A paid holiday occurring on an eligible employee's scheduled day off will be paid an additional eight (8) hours of their regular straight time rate of pay.~~

- Eliminate reference to paid time off on a holiday by changing the CBA language to read as follows:

  Section 12.5 All employees shall work holidays as scheduled. ~~An employee requesting Vacation or Comp on a paid holiday, shall submit requests for work holidays scheduled. The day will be treated as a day off and the employee shall be paid an additional eight (8) hours of their regular straight time rate of pay.~~

ii. Union

- No change

B. Discussion

The parties' most recent CBA provides that a unit employee who works on a holiday is to receive time and one-half pay plus holiday pay. In addition, an employee who is not scheduled to work on a holiday is entitled to receive eight hours of straight time pay for that day.

The City proposes a substantial change in the CBA's treatment of holidays. The City proposes to eliminate holiday pay in favor of a holiday bank of 88 hours of compensatory leave per year for time worked on holidays. The City also proposes to eliminate pay for employees who do not actually work on a holiday. The City contends that financial considerations support a reduced holiday entitlement.

The Union argues that the City's proposal is a drastic change in holiday pay, representing a $584.54 loss for each unit employee. The Union additionally claims that the current holiday pay arrangement has been in place since 1976.

A more reasoned compromise is illustrated by the CBAs negotiated for the Sergeants and Corporals units. These contracts provide for a holiday bank of 110 hours which recognizes the practical reality of employees working ten hour shifts for eleven holidays. Considerations of

internal consistency support a holiday provision similar to that agreed upon for the Sergeant and Corporal units.

C. Award: The holiday provisions shall be the same as those agreed upon for the Sergeant and Corporal units.

19. Insurance – Health Insurance

A. Final Positions

i. City

- Maintain employer contributions in 2014 at 2011 amounts

ii. Union

- Add language providing:
  - Reopener on employer contributions for 2014
  - Require the Employer contribution toward health insurance premiums and health savings accounts to continue until the parties reach an agreement
  - The Union reserves the right to go to the Public Employee Insurance Plan (PEIP).

B. Discussion

The Union seeks to re-open the health insurance contribution for 2014 in the event that a three-year contract is awarded. The Union contends that since information is not yet available with respect to premium amounts and potential coverage changes for that year, the issue of insurance contributions should be subject to future negotiations once that information is known.

The City, on the other hand, argues that health insurance has always been handled on a uniform basis throughout the City, and all eligible City employees have been covered by the same insurance plans subject to identical contribution amounts. The City asserts that it has maintained this pattern through 2013, with no bargaining unit having agreed to any CBA language addressing health insurance for 2014.

Internal consistency is very important with respect to health care benefits both for the purpose of obtaining a group rate quote and for purpose of internal equity.

C. Award: The City's position is awarded.

20. – 22. Uniforms

A. Final Positions

i. City

- No change

ii. Union

- Increase clothing allowance by the following amounts in each of the following years:
  - 2012 - $40
  - 2013 - $60
  - 2014 - $50

B. Discussion

Unit employees currently receive an annual uniform allowance of $725. The Union seeks an increase allowance for each year of the proposed three-year contract term. The Union claims that the proposed increases are needed to match increased uniform costs and are modest in nature.

The City points out that the current uniform allowance amount is identical to that agreed upon for the City's two other law enforcement bargaining units. It is difficult to ascertain any external pattern since some comparable cities provide uniforms while others provide cash allowances.

There is no compelling reason to change the existing CBA language.

C. Award: The City's position is awarded.

23 - 25. Shift Differential

A. Final Positions

i. City

- No change

ii. Union

- Increase shift differential by the following amounts and percentages in each of the following years:
  - 2012 –
    - Day - $20 (18.18%)
    - Night - $20 (13.33%)
  - 2013 –
    - Day - $20 (15.38%)
    - Night - $20 (11.76%)
  - 2014 –
    - Day - $20 (13.33%)
    - Night - $20 (10.53%)

- Increase FTO pay by $.50 (i.e. 25%) to $2.50 per hour while an officer performs field training officer duties.

B. Discussion

The Union proposes a $20 increase per year in the amount of shift differential payments. The Union maintains that its proposal, when converted to an hourly rate, amounts to a modest ten cents per hour increase. The Union also seeks a $ .50 per hour increase in field training officer (FTO) pay. The Union contends that this increase is justified by virtue of the significant increase in FTO duties as a result of high employee turnover.

The City asserts that its position of no change is supported by internal consistency since the current shift differential amount and CBA language are identical to that agreed upon for the City's two other law enforcement bargaining units. The City also argues that the FTO pay issue is not arbitrable since it was not certified by BMS as an issue for this arbitration.

Here again, evidence has not been submitted to establish a compelling reason to change the current CBA language.

C. Award: The City's position is awarded.

26. Workers Compensation Payments

A. Final Positions

i. City

- Change injury on duty pay from 60 to 30 working days by changing the CBA language to read as follows:

  Section 15.8 Injury on Duty: Employees injured during the proper performance of assigned licensed peace officer duties for the Employer and thereby rendered unable to work for the Employer will be paid the difference between the employee's regular pay and Worker's Compensation insurance payments for a period not to exceed ~~sixty (60)~~thirty (30) working days per injury . . . .

ii. Union

- No change

B. Discussion

According to the current contract language, the City will pay the difference between regular pay and workers' compensation benefits for up to 60 days when a unit employee is off work as the result of being injured while on duty. The City's proposal on this issue is to reduce this benefit to 30 days in duration.

Both of the City's other law enforcement CBAs provide for the same 60 day pay enhancement provided by the parties' current contract. On the other hand, the relevant external pattern is consistent with the shorter 30 day proposal.

No compelling reason has been shown to warrant a change in the current contract language.

C. Award: The Union's position is awarded.

Dated: September 11, 2013

_____

Stephen F. Befort
Arbitrator