

IN THE MATTER OF ARBITRATION BETWEEN

Crow Wing County, Minnesota
“Employer”

BMS Case No. 13-PN-0553

and

Law Enforcement Labor Services, Inc.
Local No.16; Non –licensed Correctional Officers
and Jail Programmer
“Union”

Decision and Award

John W. Johnson
Arbitrator

Date of Hearing:

August 9, 2013

Post Hearing Briefs Submitted:

August 23, 2013

APPEARANCES

For the Union:

Nick Wetschka, Business Representative
Christoffer Melberg, Correctional Officer

For the Employer:

Pamela R. Galanter, Attorney

STATEMENT OF JURISDICTION

The hearing was held in the above manner on August 9, 2013 in the Crow Wing County Courthouse, Brainerd, Minnesota. The Arbitrator, John W. Johnson, was selected by the parties pursuant to the Minnesota Public Employment Labor Relations Act, as amended (PELRA).

At the hearing each party was given the opportunity to present evidence and arguments.

The parties elected to submit post hearing briefs, received by the arbitrator on August 23, 2013.

ISSUES

The parties negotiated to impasse on a collective bargaining agreement for calendar years 2012 and 2013. Four unresolved issues, and the parties' final positions on each, were submitted to the Minnesota Bureau of Mediation Services (BMS), and certified by the BMS for arbitration.

The four issues are:

1. Holidays - Length of Holiday - Article 10.1
2. Wages 2012 - Wage increase, if any, for 2012 - Article 19.1, Appendix
3. Wages 2013 - Wage increase, if any, for 2013 - Article 19.1, Appendix
4. Injury on Duty – Leave, if an injury occurs while on duty – New

The wage issues will be addressed first, and together, since they are closely related, the holiday issue second, and the issue regarding injury on duty last.

WAGES 2012 AND 2013

Employer position: 0% general increase for 2012, 0% general increase for 2013.

Union position: 2% general increase for 2012, 2% general increase for 2013

In determining wage awards in interest arbitration, arbitrators have considered the employer's ability to pay, internal comparisons of wage changes for other groups of employees employed by the employer, external comparisons of wages and wage increases for comparable employees of comparable employers, and other economic factors, such as changes in the cost of living. Also, Minnesota Statutes Section 471.992,

subd. 2. requires interest arbitrators to consider what effect an award would have on pay equity. Regarding pay equity, the parties have shown that pay equity for employees of Crow Wing County will not be affected by the wage award in this arbitration, so pay equity will not be discussed further.

Ability to pay

Both the employer and the union provided extensive information about Crow Wing County's recent financial history and current circumstances. The employer emphasized that Federal and State funds are a significant source of revenue for the County, and that these have declined, creating budget pressure on the County. The employer also shows that personnel costs have increased as a percentage of the County budget, from 38% of expenditures in 2004 to 50% in 2013. Total estimated market values have decreased from 2010 to 2013, which adversely affects property tax revenue. In addition, the County has to budget for increasing costs retiree health and dental insurance.

The Union on the other hand, asserts, based on the County's 2011 Comprehensive Annual Financial Report, that the County's financial health is improving. The Union points out that the undesignated fund amount cited in the 2011 report is \$16.63 million. Compared to that amount, the estimated difference in cost between the Union's wage proposal and the Employer's, \$163, 53 million, is less than .9% of the undesignated amount.

Considering all the information provided, I conclude that the employer does have the ability to pay for the Union's wage proposal. It does not necessarily follow that the Union's proposal should be granted, however. Other factors need to be considered.

Internal Comparisons

It is generally accepted among arbitrators that the role of an arbitrator in interest arbitration is to determine what the parties would have negotiated had their negotiation concluded successfully. One strong indicator of what the parties would have negotiated is the presence of a clear and consistent pattern of settlements among other bargaining units representing employees of the same employer.

The employer's evidence shows that Crow Wing County has begun transition to a performance based pay system (PBP), consistent with its implementation of a Managing for Results performance management system to track and measure County performance in key areas against pre-determined goals. Through negotiating this change with the County's bargaining units, four different settlement models have emerged: (1) bargaining units that accepted performance based pay, which includes a new pay matrix; (2) bargaining units that have not agreed to performance based pay, but have accepted the new pay matrix; (3) bargaining units that are transitioning to performance based pay over time; and (4) bargaining units that have accepted neither the new pay matrix nor performance based pay. The Correctional Officers Unit is among those who have rejected both the new pay matrix and performance based pay.

As of the date of this arbitration, nine of the 12 bargaining units representing Crow Wing County employees have settled contracts covering 2012 and 2013. Employer Exhibits 15 through 18. Of these only the AFSCME General Unit, representing 80 of the 423 County employees, has, like the Correctional Officers, rejected both the new pay matrix and performance based pay. The AFSCME General Unit negotiated 0% pay increases for both 2012 and 2013. Bargaining Units that accepted the new pay matrix but not performance based pay received a 2% general adjustment, but not step increases.

Bargaining Units that are transitioning to performance based pay received 0% plus steps for 2012 and 2013, except for Local 49, which received 1.5% for 2012 and 2% for 2013. The difference for Local 49 was in response to a prior “soft freeze” on wages.

Bargaining units that fully accepted the PBP are on the new pay matrix, with increases based on performance. There are also some small differences among the settlements within each of models 2 and 3 above.

Where there are four different settlement models, and some small differences among settlements within two of those models, it is somewhat difficult to conclude that there is a dominant pattern providing clear indication of what the parties would have agreed to if they had bargained to settlement. However, no bargaining unit obtained a wage settlement as generous as the one proposed by the Correctional Officers, so it makes sense to conclude that the parties would not have arrived at that through negotiation. Also the fact that the one other bargaining unit rejecting both the new pay matrix and performance based pay received 0% settlements for both years, provides support for the employer’s position. In addition, three other bargaining units that are transitioning to

performance based pay received 0% general increases, although two of those received 2% at the range maximum, in a lump sum for 2012 and on the base for 2013.

External Comparisons

Both parties included salary and settlement comparisons with Correctional Officers employed by other Minnesota Counties. There is not complete consensus between the parties about what the appropriate comparisons are. The data provided by the parties does assist in drawing conclusions about what an appropriate wage increase would be, however.

The Union provided three exhibits showing external comparisons. Union Exhibits pages 70 through 72. There is some overlap among the three exhibits. Altogether, these three exhibits provide comparison data for 18 other counties. For 2012, wage settlements for these 18 vary from 0% to 4%, with the most common settlement being 0% (nine counties) For 2013, settlements vary from 0% to 2.9 %, with the most common being 2% (five counties). Six of the 18 have not settled for 2013. Settlements for 2011, shown on these same exhibits, varied from 0% to 3%, with 14 counties getting 0%, while Crow wing County got 2%.

It is also relevant to compare what the pay range maximums are for these counties. These same Union exhibits show that for 2011, Crow Wing County has a higher range maximum than all but two of the other counties. The two higher ones are Aitken and Stearns Counties. For 2012 and 2013, if the employer's proposal were in effect, this pattern would still hold true. The comparabilty of the Atkin County data can be

questioned. It takes 28 years to reach the maximum of the range for Aitken County, and 7 years in Crow Wing County. Employer Exhibit 36C.

The employer presented three sets of wage comparison data, identified as the Historical Comparison group, the Historical Comparison group plus St Louis Sherburne and Stearns Counties, and the 2007 Market Study. Employer Exhibits 35 through 37F. These sets of data each included comparisons for 2011, 2012 and 2013. Altogether these sets of data included wage data for 22 Minnesota Counties either surrounding Crow Wing County or otherwise considered to provide worthwhile comparisons. All show that under the Employer's wage proposal the wage range minimums and maximums would continue to be well above the average for any of the comparison groups.

Other Economic Factors

The Union points out that the Consumer Price Index increased 3.7% in 2011, 2.1% in 2012, and 1.6% in the first half of 2013, and puts this forward as justification for its proposal. The employer responds by showing that from 2000 through 2011, the CPI increased a total of 28.2%, while employee wages in the Correctional Officer bargaining unit, including average steps, increased 38.0%. Employer Exhibit 24.

Conclusion

The internal salary data, although it does not show a single uniform settlement pattern, does show that for the one other bargaining unit rejecting both the new pay matrix and performance based pay, the increases are 0% for 2012 and 2013, and that three other bargaining units also received 0% general increases, with more money applied only at the

top step. This supports the employer's position. The external comparisons do show that several other Counties had increases of 2% in 2013, but this has to be considered in light of the fact that even with these increases, the average pay for the Counties offered by the parties as comparisons remains well below what the employer's proposal would provide. With respect to the CPI, data show that over time, the wage increases received by employees in this bargaining unit have exceeded the CPI.

Based on the above, the employer's position is awarded: 0% increase for 2012 and 0% increase for 2013.

HOLIDAY PAY

Article 10.1 states:

The following ten (10) days shall be paid holidays for all regular employees:

New Years Day	Labor Day
Martin Luther King Day	Veterans Day
President's Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Fourth of July	Christmas Day

The Union proposes to add the following new contract language:

10.1 Employees, who are regularly scheduled for work on a holiday on a shift in excess of eight hours, shall receive holiday pay for the entire length of the scheduled shift.

The employer proposes no change in the Holiday language.

Correctional Officers in the Crow Wing County Sheriff's Office work six 12 hour shifts and one eight hour shift in a pay period. When an employee in the bargaining unit works on one of the designated holidays, the employee receives eight hours of holiday pay, regardless of the length of the shift, plus time and one half for each hour worked. The Union proposal would change that to 12 hours of holiday pay for those employees who work a 12 hour shift.

The Union estimated that this change would cost less than \$21,000 per year. The employer takes a different approach, estimating that it would amount to a 1.9% pay increase for each employee.

The Union argues internal consistency, since two other bargaining units in the Sheriff's Department, the Licensed Supervisory Unit, and the Non-Licensed Supervisory Unit, also have this contract provision. The employer points out that two other bargaining units in the Sheriff's Department, the Deputies and the Dispatchers, do not.

When new contract terms are proposed in interest arbitration, the party proposing the change has the burden of proof to show that there is either a quid pro quo, that is, something given in exchange for the requested change, or that there is substantial justification for the requested change. Arbitrator Miller has stated:

“It is axiomatic in interest arbitration that a party proposing a change in existing contract language shall have the burden of proof in establishing that there is a substantial problem with this language and its proposed change is necessary and

reasonable and will effectively and efficiently resolve the problem. Thus, the party proposing to change the existing language bears the burden of showing the need for the change or a “quid pro quo” for the change.” Law Enforcement Labor Services, Inc. and City of Blaine, BMS Case No.10-PN-0956 (Miller, 2010),

The union has not met its burden. The Union has not identified either a quid pro quo, or any justification other than that two of the five bargaining units in the sheriffs department have the same benefit.

Conclusion

The Employer’s position is awarded: No change in the Holiday language.

INJURY ON DUTY

The Union is proposing to add the following language to the Collective Bargaining Agreement:

Injury on Duty: For employees receiving benefits under the Worker’s Compensation Law, the County shall pay the difference between the Worker’s compensation check and the employee’s base wage for a period of ninety (90) days. Effective on the ninety first day, compensatory time accumulated pursuant to Article 8.2 may be used to make up the difference between such benefits and the employee’s normal net earnings for each period. After all accumulated compensatory time is used, Extended Leave Bank hours may be used for absences of four or more days, or Personal Time Off hours may be used to make up the

difference between such benefit and the employee's normal net earnings each period.

The Employer proposes no change.

As with the Holiday pay issue, the Union is proposing a new contract provision, and is therefore obliged to show that there is either a quid pro quo, or substantial justification for the proposed change.

The principle change that would be created by this proposed language is the addition of the County paying the difference between what workers compensation pays and the employee's base wage for the first 90 days of absence due to an injury for which the employee receives workers compensation. Existing contract provisions allow use of the employee's Extended Leave Bank or Personal Time Off when an employee is absent due to illness or injury. Existing language also allows one employee to donate personal time off to another.

In support of its position, the Union offered the testimony of Christoffer Melberg, a Correctional Officer who was injured on duty. Mr. Melberg testified that he was injured in August of 2012 in an altercation with an inmate who was unhappy about access to a vending machine. The injury included an ACL tear and tissue damage to his knee. Mr Melberg was unable to work due to the injury. After three months the County discontinued its contribution to his health insurance coverage, consistent with County policies, but did then agree to extent its contribution to Mr. Melberg's insurance for an additional period of time. Once the County contribution was discontinued, he had the option to pay the entire insurance costs from his workers comp payment, which though

not subject to income tax, is 2/3 of his regular rate of pay. He attempted to obtain insurance through the State of Minnesota, but was told he made too much money, with the workers comp payment, to qualify. He also testified because of his injury his wife had to take time off from her employment to provide child care.

In addition to the example provided by Mr. Melborg's testimony, the union asserts that internal consistency also supports its position. Three of the five bargaining units in the Sheriff's department already have this language; the Deputies, the Licensed Supervisors, and the Non-Licensed Supervisors. The other bargaining unit in the Sheriff's department, the Dispatchers, does not.

The Employer takes the position that there is no need for the proposed change, and that the history of bargaining for this unit supports its position. Since the Correctional Officers became a separate bargaining unit in 2001, they have voluntarily settled contracts without this language, demonstrating, according to the Employer, that this change is not necessary.

The Employer also asserts that the Union, as the party proposing this change, must not only provide a compelling reason for the change, but also present clear evidence of what the "quid pro quo" would have been at the bargaining table if the County had agreed to include this new benefit in the contract, citing Arbitrator Wallin Law Enforcement Labor Services and County of Scott, BMS Case No. 96-PN-1938 (Wallin, 1996)

Arbitrator Miller, on the other hand, Miller, Supra, at 10, states that the party proposing the change must show either a need for the change or a quid pro quo. I agree with Miller on what the proposing party's burden is.

The Union provided no evidence of a quid pro quo. The question then is, has the union shown a need for the proposed change sufficient for it to be awarded.

The example of Mr. Melberg shows what can happen to a Correctional Officer who receives a significant on the job injury. Neither party provided clear evidence of the frequency with which such severe on the job injuries occur in this bargaining unit, so I do not know how often they occur. It may be that this issue hasn't come up in bargaining with this unit before because such injuries are infrequent, but again, I do not know. What I can derive from the evidence is that Correctional Officers, like Deputies, Licensed Supervisors, and Non-Licensed Supervisors, are subject to risk of substantial injury from those with whom they deal in the course of their employment, however infrequently such injury may actually occur. When this happens, it can be a substantial problem for the affected employee. The potential severity of the problem for the employee when it does occur, the need to treat Correctional Officers fairly in comparison to other groups of employees subject to similar risk, and the importance of internal consistency among comparable groups of employees, do provide sufficient reason to award the Union's position.

Conclusion

The Union's position is awarded: New language as proposed by the Union.

Dated: September 20, 2013.

John W. Johnson, Arbitrator