IN THE MATTER OF ARBITRATION BETWEEN

County of Wadena,

Employer,

and

Teamsters, Local 320

Union.

INTEREST ARBITRATION DECISION

BMS Case No. 13-PN-0513

Arbitrator:	Stephen F. Befort
Hearing Date:	August 29, 2013
Record Closed:	September 4, 2013
Post-hearing Briefs submitted:	September 19, 2013
Date of Decision:	October 18, 2013
Appearances:	
For the City:	Thomas Fitzpatrick
For the Union:	Joseph A. Kelly

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 essential public safety employees employed by the Wadena County Sheriff's Office ("County"). The unit consists of nineteen members: ten jailer/dispatchers, five deputies, two bailiffs, one investigator, and one jail administrator.

The parties previously negotiated a collective bargaining agreement ("CBA") for 2011-2012. 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 20 unresolved issues for interest arbitration.

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 20 disputed issues. The decision first will address the matter of wages and then the remaining issues in the numerical order of certification.

5.-6. Wages

A. Final Positions

i. Union

- 3% general wage increase for each year of the contract.
- $1.50 market rate adjustment for 2013 as well as a $1.50 market rate adjustment for 2014 if more than a one-year contract is awarded.

ii. County

- 2% general wage increase for each year of the contract.

B. Discussion

Union Arguments

The Union contends that the County has the ability to pay the requested salary adjustments and that the County has failed to submit any hard budgetary evidence to substantiate its claim of economic inability. The Union cites a 2013 news release stating that the County's "general fund revenues have gone up each year for the past five years and the overall fund balance has more than doubled from five years ago." The Union also points out that the County ranks 85 out of Minnesota's 87 counties in the proportion of budgetary resources committed for public safety purposes. The Union additionally submitted testimony establishing that the County

recently provided the non-union, part-time deputies in the County Sheriff's Office with a 60% increase in compensation.

The Union elicited the testimony of Sheriff Carr concerning the long-term financial status of the County Sheriff's office. Sheriff Carr testified that the County experienced severe financial problems in 2009 as a result of the recession. At that time, the Union agreed to a total freeze on pay as a means of assisting the County in weathering this period of economic distress. Sheriff Carr further testified to an implicit understanding with the County Board of Commissioners that the Union's assistance would be repaid by bringing salaries back into line once the County's financial condition improved. He testified that this recalibration has not yet happened and that this unit remains underpaid, resulting in serious retention problems.

The Union maintains that unit members currently receive approximately $2.00 per hour less in compensation than do employees in comparable counties. The Union argues that its wage and market rate adjustment proposals still would leave the unit employees below relevant comparator employees. The Union asserts that the requested market rate adjustment for 2013 would only cost the County a total of $59, 280 for that year.

County Arguments

The County claims that the Union's position on wages is untenable in light of the County's very limited economic resources. The County submitted evidence establishing that Wadena County has the lowest median household income of any county in the state and that Wadena County ranks 84 out of Minnesota's 87 counties in tax capacity. With regard to the latter factor, the County maintains that its taxable market value has fallen by almost 30% in the last five years. The County further argues that its economic position has been detrimentally affected by a 2010 tornado that destroyed 173 homes.

The County points out that the Union's position on wages substantially exceeds the established internal pattern. The County's three other represented units each have settled for an annual 2% wage increase for 2013, 2014, and 2015. Similar wage adjustments also have been adopted for the County's non-represented employees. The County maintains that a unified, County-wide compensation plan is essential for labor stability and basic fairness.

The County further claims that the Union's wage position would be unreasonably costly to the County. The combination of a 3% annual wage increase coupled with a $1.50 market rate adjustment would raise unit salaries by more than 6% annually. The County contends that these increases would raise unit salaries by between 20-30% over the life of a three-year contract.

While the County acknowledges that unit salaries lag somewhat behind pay in comparator counties, the County argues that the Union has overstated the extent of the disparity. The County also points to data showing that the average wage increases negotiated by Local 320 for Minnesota units were less than 2% for both 2012 and 2013.

C. Analysis

Economic Considerations

In a 2002 interest arbitration decision involving this same unit, Arbitrator Chris Ver Ploeg stated that a major factor influencing her award was the County's "extremely limited resources and [the fact] that its local taxpayers are already carrying a heavy burden." The County's difficult economic climate continues to the present and may be even be more limited than in 2002 as the result of the combination of the recent recession and the 2010 tornado. On the other hand, the Union is correct in contending that the County has the basic ability to fund the Union's wage proposal and that the economy is starting to improve. On balance, however, 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 Union submitted extensive evidence with respect to external comparables. The Union's evidence shows that the wage rates for unit employees currently are about $2.00/hour below the average of wages paid in the Regional Development 5 counties. The Union's evidence shows a similar negative disparity when the comparison is drawn to those counties that are contiguous to Wadena County. Based on this data, the Union asserts that even an award of its combined wage and market rate adjustment proposals still would leave the unit employees underpaid in comparison.

The County acknowledges that the unit employees are paid less than the external comparison groups, but it maintains that the disparity is not as large as that asserted by the Union. The County did not submit its own independent evidence relating to external comparisons.

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 2% annual increase for 2013, 2014, and 2015. The Union, on the other hand, claims that a higher wage adjustment is appropriate because of the extent to which the unit employees lag behind the relevant external comparisons. The Union claims that this disparity has resulted in a retention problem, while the County claims that the high number of unit employees at or near the maximum of the salary range illustrate the absence of any retention problem.

In general, an award consistent with a public employer's internal compensation pattern fosters internal consistency in wage adjustments and promotes labor stability. On the other hand, I am concerned that this unit has fallen substantially behind external comparable counties in wages. In order to balance these two concerns, I will award a 2% annual wage increase for each of the first two years of the contract term, plus a 2.5% wage increase for the third year of the contract term.

C. Award: A 2% wage increase for 2013, a 2% wage increase for 2014, and a 2.5% wage increase for 2015.

1. Duration

A. Final Positions

i. Union

- One year CBA for calendar year 2013.

ii. County

- Three year CBA, January 1, 2013 through December 31, 2015.

B. Discussion

The Union contends that a one-year contract term is desirable in order for the Union to be able to exercise its statutory right to participate in the Public Employees Insurance Program (PEIP). PEIP is a statewide insurance program offering hospital, medical, dental and life insurance benefits. Pursuant to Minn. Stat. § 43A.316, an exclusive representative has the right to determine whether a bargaining unit will participate in this program. An exclusive representative must provide at least 30 days advance notice of its intent to participate in this program, and the Union served such a notice upon the County as of November 19, 2012. The Union claims that it is economically advantageous for unit members to switch to PEIP coverage, but that a change is not permissible while a collective bargaining agreement is in effect. The Union, accordingly, requests only a one-year contract so that the PEIP option may be exercised at the contract's expiration at the end of calendar year 2013.

The County's objects to the proposed truncated contract term. The County points out that the other three represented units each have agreed to a three year term extending from 2013 to 2015. The County urges that uniformity in the duration of collective bargaining agreements is imperative in order to promote budget certainty and bargaining efficiency. The County also contends that the existence of a CBA does not prevent an exclusive representative from choosing to exercise the statutory right to claim PEIP coverage.

I agree with the County'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 possibility of whipsaw bargaining.

C. Award: The County's position of a three-year contract is awarded.

2. Employer rights

A. Final Positions

i. County

- Seeks to add the following language to Section 5.1:

  The Union recognizes the right and obligation of the Employer to efficiently manage and conduct the operation of the Employer within its legal limitations

ii. Union

- No change

B. Discussion

The management rights clause in the current CBA reserves for management the "full and unrestricted right" to manage the County's operations subject only to the express provisions of the CBA. As such, the County's proposal does not appear to add to or to clarify the rights already established in Section 5.1. The County, accordingly, has not carried its burden of demonstrating the need for this change,

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

3. Maintenance of Standards

The current contract language of Article VI states:

The Employer agrees, subject to the following provisions, that all conditions of employment in his/her individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved whenever specific provisions are made elsewhere in this Agreement.

A. Final Positions

i. County

- Eliminate provision.

ii. Union

- No change

B. Discussion

The logic underlying the County's proposal to eliminate this provision was not explained at the hearing or in the County's post-hearing brief. It also appears that this provision continues to be part of the General Unit CBA between the County and Teamsters Local 320. Under the circumstances, the need for this change has not been established.

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

4. "Me Too" Provision

The current language of Article XIX, Section 19.1 states:

> "Me Too" Provision – During the term of the Labor Agreement, bargaining unit employees shall be entitled to receive any wage or benefit enhancement that is given to or negotiated with any or all other County employees or elected official(s). The "Me Too" provision shall not apply when an employee is moving to a higher pay grade as a result of a pay equity upgrade.

A. Final Positions

i. County

- Eliminate provision

ii. Union

- No change

B. Discussion

The parties first adopted the "Me Too" provision in 2009. According to the Union, the County agreed to this provision as part of the bargain resulting in the Union accepting a wage freeze to help the County weather the depths of the recent recession.

The County argues that the "Me Too" provision has the deleterious effect of inhibiting the County's ability to respond to unique circumstances. As an example, the County points to its attempt to raise the below-market pay of the County Recorder which was thwarted due to the

Union's assertion that such action would trigger the "Me Too" clause. The County additionally claims that all of the other represented units have agreed to the elimination of this provision in their CBAs. This factor is important because it shows that the parties also likely would have agreed to eliminate this provision if the bargaining process had reached its voluntary conclusion.

C. Award: The County's position is awarded on this issue.

7-9. Uniform Allowance

A. Final Positions

i. Union

- Modify current language to increase uniform allowances as follows:

Employees who, as a condition of their employment, are required to wear a uniform or safety equipment shall be furnished such uniform or equipment by the Employer. The uniform allowance for the period covered by this Agreement, effective 1/1/2013, shall be three hundred and fifty dollars ($350.00) per year for the full-time and part-time Jail/Dispatch, Jail Administrator, and Emergency Manager (EMS) job classifications.

Effective 1/1/2014, the uniform allowance for the full-time and part-time Jail/Dispatch, Jail Administrator, and Emergency Manager (EMS) job classifications shall be three hundred and seventy-five dollars ($375.00).

Effective 1/1/2015, the uniform allowance for the full-time and part-time Jail/Dispatch, Jail Administrator, and Emergency Manager (EMS) job classifications shall be three hundred and seventy-five dollars ($375.00).

Effective 1/1/13 Deputies' uniform allowance shall increase to eight hundred dollars ($800.00).

Effective 1/1/14 Deputies uniform allowance shall increase to eight hundred and twenty five dollars ($825.00)

Effective 1/1/15 Deputies uniform allowance shall increase to eight hundred and ~~fifty~~ dollars ($850.00)

Effective 1/1/13 part-time deputies and bailiff uniform allowance shall be five hundred dollars ($500.00).

Effective 1/1/14 part-time deputies and bailiff uniform allowance shall be five hundred dollars ($525.00).

Effective 1/1/15 part-time deputies and bailiff uniform allowance shall be five hundred dollars ($550.00).

ii. County

- No change.

B. Discussion

This essential employee unit is the only County unit with a uniform requirement. The Union contends that unit members frequently exhaust their annual uniform allowance before the end of the year and purchase additional uniforms out of pocket. The County maintains that the current uniform allowance is adequate. The Union submitted evidence showing that unit employees receive the lowest uniform allowance of all comparable counties.

The absence of any internal comparison with respect to this issue enhances the impact of external comparisons. The smaller uniform allowance afforded to this unit warrants an increase, but not as large as that sought by the Union.

C. Award: The following annual uniform allowances are awarded for the life of the 2013-15 CBA.

- The uniform allowance for full-time and part-time Jail/Dispatch, Jail Administrator, and Emergency Manager (EMS) job classifications shall be three hundred and seventy-five dollars ($375).

- The uniform allowance for full-time deputies shall be seven hundred dollars ($700).

- The uniform allowance for part-time deputies and bailiffs shall be four hundred and fifty dollars ($450).

10-17. Insurance

A. Final Positions

i. Union

- Modify Article XI as follows:

The Employer has available a hospital-medical-surgical plan for its employees. The Employer's contribution toward single/Employee Plus One/family premium costs are made only for employees who participate in the hospital-medical-surgical plans offered by the Employer. ~~To be eligible to receive monthly Employer contributions for waived coverage, a qualified employee must provide evidence of coverage in a group sponsored plan elsewhere.~~

A. Wadena County ~~full Cafeteria Plan~~ hospital-medical-surgical plan effective January 1, 201~~0~~3 as follows:

1. For qualified employees selecting single coverage, the County shall contribute ~~$597.00~~ $680.50 monthly.
2. For qualified employees selecting Employee Plus One Coverage, the County shall contribute ~~$850.00~~ $972.50 monthly.
3. For qualified employees selecting Family coverage, the County shall contribute ~~$920.00~~ $1,123.00 monthly.

B. Insurance Benefits – The County shall increase its contribution in any amount sufficient to pay one-half (1/2) of the increased premium cost for the hospital-medical-surgical plan and/or PEIP or the same amount contributed towards plans for other employees in the County, whichever amount is greater. The County's contribution shall be pro-rated for eligible part-time employees. Any increased contribution by the County shall be added to the ~~Cafeteria Plan~~ hospital-medical-surgical plan.

ii. County

- Modify Article XI as follows:

A. Wadena County full Cafeteria Plan effective on the date of the contract based upon the $500 deductible plan as follows:

B.

1. For qualified employees selecting single coverage, the County shall contribute ~~$597.00~~ $671.50 monthly.
2. For qualified employees selecting Employee Plus One Coverage, the County shall contribute ~~$850.00~~ $958.50 monthly.
3. For qualified employees selecting Family coverage, the County shall contribute ~~$920.00~~ $1,101.50 monthly.

Strike the first sentence of Section 11.1 B, Insurance Benefits and insert the following language in its place:

Effective January 1, 2014, the County shall increase its contribution in an amount sufficient to pay one half (1/2) of the premium increase for the $500 deductible health insurance plan from the 2013 contribution amount shown in A above.

Effective January 1, 2015, the County shall increase its contribution from the 2014 amount sufficient to pay one half (1/2) of the premium increase for the $500 deductible health insurance plan based upon rates in effect for 2015

C. Non-participating Employees: For Employees hired prior to January 1, 2013, the County shall contribute $300.00 per month for qualified employees waiving health coverage who provide evidence of coverage in a group sponsored plan elsewhere.

B. Discussion

Both parties propose significant changes with respect to health insurance. Many of the Union's proposals reflect its stated desire to exit the County's health insurance plan and to participate in the PEIP program. The Union, for example, seeks to amend the current language so as to provide that the County will pay one-half of the increased premium cost for the County's hospital-medical surgical plan and/or for employees on the PEIP plan. The Union also seeks to strike the last sentence of Section 11.1 which now requires employees seeking employer contributions for waived insurance to provide evidence of coverage in another group-sponsored plan. The Union further proposes to avoid tying the County's contribution to a specific deductible plan. The Union argues that since insurance providers may not offer a specific deductible pan, it is preferable to tie contribution amounts to total costs. Finally, the Union requests an amendment to Section 11.9 so that retirees could elect coverage under either the County's health plan or under PEIP at their own expense.

The County contends that it has long offered a County-wide uniform health plan for all of its employees. The County asserts that its final position represents the current uniform plan in place for all other County employees. According to this plan, the County has increased its premium contribution while basing its calculation on a $500 deductible plan rather than on the previous, but rarely selected, $200 deductible plan. The County opposes the Union's bid to have the County's contribution extend to the PEIP plan, and urges instead that the appropriate County

aid in the event that the unit employees exit the regular County plan is Section 11.1 C's provision of a $300/month payment for those employees "waiving health coverage who provide evidence of coverage in a group sponsored plan elsewhere." The County argues that the Union's position would provide a windfall to unit employees with PEIP coverage while jeopardizing the ability of the remaining County pool to obtain competitive health care coverage rates.

Internal consistency is perhaps nowhere more important than with respect to health care benefits. Providing health care benefits in a uniform internal package enhances both fairness and optimal group rating goals. In this instance, the County's proposal represents the internal pattern. The Union's proposal for the County to pay one-half of the cost if the Union exits the County plan to obtain PEIP coverage serves neither fairness nor group coverage objectives. Instead, the County's proposal to provide a $300/month payment in the event that the Union selects PEIP coverage appears to be fair and appropriate. On the other hand, the Union's request to revise Section 11.9 to permit retired employees to elect coverage under either the County's regular health plan or under PEIP at their own expense makes sense.

C. Award: The County's position is awarded on issues 10 to 16. The Union's position is awarded on issue 17.

18 - 19. Shift Differential

The current language of Section 8.5 provides as follows:

> Deputy Sheriffs and Jailer Dispatchers that work 10 p.m. – 6 a.m. shift shall receive an additional forty cents ($.40) per hour shift differential. The shift differential for the Deputy Sheriffs shall take effect upon implementation of this Labor Agreement.

A. Final Positions

i. Union

- Modify language to provide for shift differential pay for any time worked between 7:00 p.m. and 7:00 a.m.

- Increase shift differential pay from $.40 per hour to $.60 per hour effective 1/1/2013 and to $.80 per hour effective 1/1/2014.

ii. County

- No change.

B. Discussion

The Union points out that nurses in the General Unit are eligible for shift differential pay for "hours worked between 4:30 p.m. and 8:00 a.m. and on weekends." The nurses earn $.40 per hour in shift differential pay. The Union contends that essential employees in some comparable counties earn higher shift differential pay in the range of $1.00 per hour.

C. Award: The County's position on issue 18 is awarded retaining shift differential eligibility for work performed between 10:00 p.m. and 6:00 a.m. Shift differential pay shall be increased to $.50 per hour.

20. P.O.S.T License

A. Final Positions

i. Union

- Proposes the following new provision:

Effective January 1, 2013, the Employer shall be responsible for providing all training required by P.O.S.T. Board to maintain employee's licenses as certified deputies, pay employees for all time spent in such training at their applicable rate of pay, and reimburse employees for all reasonable costs incurred in obtaining training, including, but not limited to mileage, meals, lodging, books and license fees.

ii. County

- No change.

C. Discussion

Unit employees must spend time in training in order to maintain their required P.O.S.T licenses. The parties' current CBA says nothing about paying for the costs of this training and licensure, which means that the individual employees currently pay for these costs on an out-of-pocket basis. In support of its position that the County should assume responsibility for these costs, the Union points to the fact that many comparable counties either pay such costs or reimburse employees for these expenses. While the Union's position certainly is understandable, it has not demonstrated a compelling reason for this substantive change in benefits.

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

Dated: October 18, 2013

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Stephen F. Befort
Arbitrator