

**IN THE MATTER OF ARBITRATION
BETWEEN**

MINNESOTA PUBLIC EMPLOYEES ASSOCIATION

Union,

and

COUNTY OF FARIBAULT,

Employer

**ARBITRATION DECISION AND
AWARD**

**BMS Case No. 13-PN-0350
(Non-Licensed Essential Unit)**

Arbitrator:

Andrea Mitau Kircher

Date and Place of Hearing:

October 24, 2013

Date Record Closed:

November 11, 2013

Date of Award:

December 11, 2013

APPEARANCES

For the Association:

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For the Employer:

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INTRODUCTION

Minnesota Public Employees Association (“MNPEA” or “Union”) is the certified bargaining representative for the non-licensed essential employees’ unit that represents Jailers and Dispatchers employed by Faribault County (“County” or “Employer”). The expired collective bargaining agreement between the Employer and a predecessor Union was effective from January 1, 2011 through December 31, 2011. The parties have been

unable to reach agreement on all articles of the successor contract. Pursuant to the Public Employment Labor Relations Act, Minn. Stat. ch. 179A (hereafter “PELRA”), the parties engaged in mediation, and then petitioned the Bureau of Mediation Services for interest arbitration on the issues at impasse.

The Bureau certified 8 issues for arbitration, and the parties submitted their final positions. In accordance with the collective bargaining agreement (“CBA” or “contract”), the parties selected Andrea Mitau Kircher as arbitrator, and a hearing was conducted at the Faribault County Courthouse in Blue Earth, Minnesota on October 24, 2013. At the hearing, evidence and other data were accepted as part of the record; witnesses were sworn and testimony was presented subject to cross-examination. Post-hearing briefs were submitted and exchanged by U.S. mail and the hearing record closed upon receipt of the briefs November 11, 2013.

ISSUES

The Minnesota Bureau of Mediation Services certified the following issues for arbitration:

1. Wages for 2012 – General Increase, if any - Appendix A
2. Wages for 2012 – Market Adjustment, if any
3. Wages for 2013 – General Increase, if any
4. Wages for 2013 – Market Adjustment, if any
5. Health Insurance for 2012 – What should be the Amount of Employer Contribution for 2012 – Article 22
6. Health Insurance for 2013 – What should be the Amount of Employer Contribution for 2013? Article 22
7. Health Insurance Language – What should be the Plan Type Language in the Contract? – Article 22
8. Training – How should Training Pay be Calculated? Article 25.

At the time of the hearing, the parties had resolved issues five and six; the Union agreed to accept the Employer’s offer regarding its health insurance contribution. The

parties had also resolved issue 8. Issues 1-4, which all concern wages, will be combined for discussion.

POSITIONS OF THE PARTIES - WAGES

Issue 1. Wages – General Increase, 2012

The Union proposes a 3% general increase, retroactive to January 1, 2012.

The Employer proposes a 1.25% increase effective January 1, 2012.

Issue 2. Wages, Market adjustment, 2012

The Union proposes a 3 % increase to reflect prevailing market wages, retroactive to January 1, 2012.

The Employer proposes no market adjustment for 2012.

Issue 3. Wages, General increase, 2013

The Union proposes a 1.5% general increase, retroactive to January 1, 2013

The Employer proposes 0% increase effective January 1, 2013.

Issue 4. Wages, Market Adjustment, 2013

The Union proposes a 1.5% increase to reflect prevailing market wages, retroactive to January 1, 2013

The Employer proposes 0% market adjustment for 2013.

BACKGROUND FACTS

Faribault County is a small rural county with a population of 14,553. Employer Ex. 53. The parties agree that the appropriate economic region in Minnesota for wage comparison purposes is Economic Region 9. Of the nine counties that make up Region 9, Faribault County is comparatively near the bottom on a variety of economic and demographic factors. Its population is 54% of the average; its tax capacity is only 69%

of the average tax capacity. Its net tax levy is 64% of the average, and its revenues are only 62% of the average. Employer Ex. 54-56.

One common measure of a county's financial health is the amount available in the unrestricted portion of its fund balance. Er. Ex. 26. According to the State Auditor's Office, Faribault County had the lowest fund balance in the state at 17% of total expenditures for 2011, the last year for which the data was available. Er. Ex. 27.

Counties must rely on the unrestricted fund balance for cash flow during the first five months of a year until they receive the first property tax payments in May and aid payments from the state in July. The State Auditor recommends that counties maintain an unrestricted fund balance of 35-50% of operating revenues, and Faribault County has made it an official goal to improve their unrestricted fund balance. Er. Ex. 24 and 28.

Lack of a sufficient unrestricted fund balance to insulate the county from unforeseen losses in revenues results in budgetary difficulties and higher property tax levies to county residents. Er. Ex. 26 and 27. In October 2013, John Thompson, the County Auditor-Treasurer- Coordinator, reported that over the last few years the County has combined the offices of Auditor and Treasurer, cut public works budgets, implemented a mandatory furlough for most employees, reduced salaries of elected officials by 3%, and cut various other allocations. Er. Ex. 24. The County increased tax levies in 2012 by 3% or \$570,000 including a \$271,000 increase to the General Fund, and in 2013, increased tax levies by 2.5% including a \$28,650 increase to the General Fund. (Unnumbered Union Exhibit, based on data from County Board Meeting minutes.)

The County has a total of 115 employees. Of these, 59 are non-union employees who received wage increases of 1.25% over the two-year period 2012-13. Two

bargaining units settled their contracts voluntarily for 2012-13 for the same amount. Those contracts covered 36 employees. Nineteen of the 36 are in the Courthouse bargaining unit represented by AFSCME Council 65, and there are 17 in the Highway Unit, represented by IUOE Local 49.

The County has two units of essential employees who have the statutory option of interest arbitration, and both sought arbitration. The LELS unit representing licensed essential employees covers seven Deputy Sheriffs, and was awarded the Employer's final position, 1.25% for 2012 and 0% for 2013, by Arbitrator Rolland Toenges in April of this year. County of Faribault and Law Enforcement Labor Services, Inc., BMS Case No. 12-PN-1086 (Toenges, 2013). The Jailer/Dispatchers represented by MNPEA, also bargained to impasse and seeks 3% in 2012 and 1.5% in 2013 for general increases as well as a 3% market adjustment for 2012 and 1.5% market adjustment for 2013. The MNPEA contract covers 13 employees, or 11% of County employees. Historically, the Jailer/Dispatchers were in the same bargaining unit as the Licensed Deputies.

UNION ARGUMENT

In summary, the Union argues that internal wage consistency is lacking in Faribault County, and further, that its employees should be paid at a rate more in keeping with the pay of employees of other counties in Economic Region 9. The Union points out that its employees are already well below the Region 9 average, and will be further behind if the Counties' rate of 1.25% over the two year period is their only increase. It claims that the average cumulative increase for 2012 and 2013 is 2.59 percent for similar jobs in the other Region 9 counties. It argues that the County is able, but not willing to pay the higher rates it desires. The Union claims, further, that the County is having

problems retaining its employees in this bargaining unit and attracting new ones, so an increased wage scale is necessary to protect Jailers from working too much overtime. Most importantly, it argues that when the County built its new, bigger jail in 2009, the duties and responsibilities of jailers increased substantially; their pay should be increased to reflect this change either through a new job study to classify their jobs at a higher pay level or through the collective bargaining process alone. Additionally, the Union argues, its employees agreed to a furlough in 2009 from which they have not yet recovered financially.

EMPLOYER ARGUMENT

The County argues that it has maintained a consistent pattern of wage increases for all its employees for many years, including 2012-13 when 89% of its workforce received a 1.25% pay increase over the two year period. It argues in terms of external comparisons that many County job classes are paid substantially less than wages in comparison counties, and this is not unreasonable considering the demographic and economic factors that distinguish the County from the comparators. The County denies that it is having trouble recruiting and retaining employees in these jobs. Employees who have left did not go to similar jobs in neighboring counties.

The County claims that it has had financial problems from which it is trying to recover and that is the reason for its low pay increases during the 2012-13 contract period. The county also points to the difficulty of making exact wage comparisons with other counties because of the differences in pay structure among them. For example, the County funds a post retirement health coverage plan which the other Region 9 counties do not; it provides a generous severance pay benefit which the other counties' employees

do not; County Jailer/Dispatchers can accrue up to 600 hours of annual leave and can cash out 600 hours. The average accrual and cash-out for other Region 9 counties is half that. The County also notes that the wage schedule is hard to compare across county lines because MNPEA Jailer/Dispatchers reach maximum pay in four years on their wage schedule while the comparison counties average 13 years to the maximum step. Comparing across County lines would look very different after four years of employment when the Faribault employees are ahead of the average wage paid other county employees by \$1.31 per hour. These discrepancies in pay schedules and overall economic conditions among the counties make comparisons of pay difficult according to the County. The County concludes that an award of anything other than the wages set for all the other County employees makes no sense. To award these 13 employees 6% over the two years as proposed would cost the County much more than the Union acknowledges both in roll-up costs and because the County will then be called upon to match that pay for the other 89% of employees during the next round of bargaining. The County claims there is no justification for awarding these 13 employees a greater wage increase than the rest of its workforce.

DISCUSSION

The general rule followed by arbitrators attempting to decide impasse disputes is that interest arbitration is not designed to discourage or supplant collective bargaining, but to encourage it. It is often said that an arbitrator's decision should be compatible with the contract the parties themselves might have reached had they been able to agree to one. Specific factors commonly considered by arbitrators in interest arbitration are these: internal comparables, external market conditions, bargaining history, ability to pay, and

statutory considerations.¹ Where the largest remaining stumbling block is wages, the question is whether the facts demonstrate sufficient reason to warrant higher wages to this group of employees. Most arbitrators emphasize internal consistency in wage patterns, commenting that internal equity promotes a feeling of fairness among employees of the same public sector employer. *See, e.g., County of Faribault and Teamsters Local No. 320, BMS Case No. 08-PN-0677 (Befort, 2009)*, at 4. Unless there are other compelling circumstances, deference to established internal relationships is the prevailing arbitral rule. Elkouri & Elkouri, *How Arbitration Works*, Ch. 22.9D (6th ed. 2003).

In Faribault County alone, two experienced interest arbitrators have both recently favored internal consistency over external market factors in deciding wages for essential employees. In 2009, internal consistency was relied upon by Arbitrator Steve Befort when he decided the salaries of this same group of employees, then represented by the Teamsters. *County of Faribault and Teamsters Local No. 320, BMS Case No. 08-PN-0677 (Befort, 2009)*, at 2 and 4. And eight months ago, Arbitrator Rolland Toenges issued a wage award for the County's other essential employees unit, the Sheriff's Deputies. In that award, Arbitrator Toenges stated:

It is axiomatic that a settlement pattern reached on behalf of the vast majority of employees, by competent and knowledgeable parties, represents a reasonable compromise considering all influencing factors. Further, a review of Deputy pay adjustments, among Faribault County employees during an eleven-year period (2000 through 2010), shows Deputy pay adjustments essentially paralleled those of all other Faribault County employees.

Employer Exhibit 30, *County of Faribault and Law Enforcement Labor Services, Inc.*, BMS Case No. 12-PN-1806 (Toenges, 2013), at 23. Arbitrator Toenges, in his

¹ I have considered the relevant statutory provisions prior to deciding this matter. The parties raised nothing specific.

thoroughly considered decision, concluded that the Deputies should be paid the same wage increases as the other Faribault County employees for the years 2012-13. *Id.* at 25. On these facts, to award the Jailer/Dispatchers pay increases at a higher rate than the other 89% of the County's work force would require a strong showing of singularity or an entirely different analytical framework. The burden of proof is on the Union. *See, i.e., Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin 1997).*

The Union argues that the arbitrator should place primary importance on external market factors rather than the internal wage increase pattern, but in the face of strong arbitral precedent to the contrary this is not a convincing argument. The relative economic ranking of Faribault County is well below the average of the comparable counties. Based on this information alone, it is hard to see why an arbitrator should adjust the pay of this group of employees upward to the Region 9 "average wage". Further, the Jailer/Dispatcher job classification is not the only County job class paid below average. *See, e.g., Er. Ex. 69-77.* Nor is the County experiencing retention and attraction problems in this job classification. Employees who have left the job have not gone to work in the same job classification with higher pay in neighboring counties. As to filling job vacancies, when two employees left, they were replaced immediately with part-time employees. Testimony, Corrections Officer, Mark Lacher.

The Union claims that there is little consistency among the various employee groups internally. The facts do not demonstrate inconsistency in terms of a general wage increase. All of the other County employees have been paid an increase of 1.25% for the

two year period, 2012 -2013. They all appear to have participated in the furlough in 2009. Er. Ex. 41A, B, C, D and E.

To increase the pay of the thirteen Jailer/Dispatchers would likely disturb pay relationships within the County in other ways. Under the job classification system, the Jailer/Dispatchers appear to earn higher wages than other non-essential employees in the same grade level. The Jailer/Dispatchers reach their maximum pay level in four years while the other employees in that grade level, some in bargaining units, some unrepresented, do not reach their maximum pay step for 6-20 years. Er. Ex. 42. Further, the Jailer/Dispatchers earn an extra pay increment for hazardous duty, while some of the other employees in that pay grade do not. Er. Ex. 42-43. The Union has not established sufficient reason for an arbitrator to award this group of employees a higher pay increase than the other County employees in the same pay grade.²

If the decision in this matter is to be guided by the likely outcome of this dispute through negotiation, as most arbitrators suggest is the standard, Faribault County has placed itself in a position where we can see what other bargaining units have negotiated. Both AFSCME and Local 49 voluntarily agreed to a 1.25% increase over the two year period. In addition, only eight months ago in the Sheriff's Deputy arbitration, another arbitrator thoroughly reviewed a very similar situation for that unit and decided to award them the County's proposed 1.25% wage increase. The Union has not provided sufficient compelling circumstances to establish that the Jailer/Dispatchers should be

² Nonetheless, a review of the job class placement for Jailer/Dispatchers in the County's system may be in order. None of the witnesses was able to say when the last job classification review was undertaken by the County. The Employer indicated that employees who believe their job duties have substantially increased without accompanying compensation may pursue an internal appeal process to determine if their job is properly classified. There is no evidence that this has occurred.

treated differently and awarded a higher wage increase than all the other county employees, and collective bargaining is not enhanced or encouraged where an interest arbitrator grants a small group of essential employees a greater increase than the vast majority of employees have been able to negotiate.

WAGES AWARD. The Employer's position is awarded.

Issue 7, Article 22. Health Insurance Language – What should be the Plan Type Language in the Contract? – Article 22

The remaining dispute between the parties concerns the Contract language the Employer proposes to adopt to explain its insurance coverage. The Union has agreed to accept the same coverage to which other bargaining units have agreed for 2012-13.

Current Contract Language

Article 22.1 The Employer will pay each employee in the year 2011 - \$665.00/month towards premium for VEBA \$3000.00, HSA \$3000.00 and Trip Gold, or \$685.00/month towards the \$5000.00 HSA for those Faribault County insurance plans offered for a single or family health insurance.

County Position

The County proposes deleting the above contract language and inserting:

Carrier: The County Board shall determine insurance providers in the usual manner provided by Minnesota Statute.

Premiums: Costs and benefits shall be determined by the insurance carrier and accepted by the Board of County Commissioners, in the usual manner provided by Minnesota Statutes.

Employer participation, at a minimum, in single coverage in the employer's group medical insurance is mandatory for all employees under the terms of the insurance program contract between the Employer and the carrier.

The Employer will pay each employee in the year 2012 \$665.00 monthly toward the premium for single or family insurance for the \$1,000 Triple Gold, \$3,000 HSA, or \$3,000 VEBA; or \$531 monthly toward the premium for single or family

insurance for the \$5,000 HSA or VEBA plan. The Employer will also contribute \$3,050 annually or \$254.17 per month into the employee's health savings account for all employees on the \$5,000 HSA or VEBA plan. An employee who enrolls for the first time in the \$5,000 HSA or VEBA plan will have his/her health savings account frontloaded with 6 months of savings account payments or \$1,525; starting in July the Employer will continue to contribute \$254.17 monthly into the account. Any portion of the County's monthly contribution toward single or family coverage in excess of the monthly premium will be paid to the employee electing single or family coverage through payroll. Any portion of the monthly premium for single or family coverage in excess of the County's monthly contribution will be paid by the employee electing single or family coverage through payroll deduction.

The Employer will pay each employee in the year 2013 \$665.00 monthly toward the premium for single or family insurance for the \$1,000 Triple Gold, \$3,000 HSA, or \$3,000 VEBA; or up to \$581 monthly toward the premium for single or family insurance for the \$5,000 HSA or VEBA plan. The Employer will also contribute \$3,050 annually or \$254.17 per month into the employee's health savings account for all on the \$5,000 HSA or VEBA plan. An employee who enrolls for the first time in the \$5,000 HSA or VEBA plan will have his/her health savings account frontloaded with 6 months of savings account payments or \$1,525; starting in July the Employer will continue to contribute \$254.17 monthly into the account. Any portion of the County's monthly contribution toward single or family coverage in excess of the monthly premium will be paid to the employee electing single or family coverage through payroll. Any portion of the monthly premium for single or family coverage in excess of the County's monthly contribution will be paid by the employee electing single or family coverage through payroll deduction.

Union Position

The Union accepts the language of the last two paragraphs of the County's position as set out above. It opposes the first three paragraphs, arguing that the first two are unnecessary because they merely restate the law. It opposes adding the third paragraph because it believes this adds a new obligation that creates some financial risk to employees in light of the changes that will be imposed under the Affordable Care Act in the coming year.

DISCUSSION

The first two of the County's paragraphs restating the law help to explain the system to employees covered under the contract, collecting the information in one place. It is the same language used in the other three CBAs at the County. Regarding the Union's opposition to the third paragraph, it is premature to be concerned about language in the 2012-13 contract about obligations that might or might not arise under the Affordable Care Act. The Union's concern can best be addressed in negotiations for the next contract rather than retroactively for this one.

AWARD: The Employer's position is awarded.

December 11, 2013

Andrea Mitau Kircher
Arbitrator