

IN THE MATTER OF ARBITRATION)
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 between)
)
City of Lino Lakes,)
Minnesota)
)
 -and-)
)
Law Enforcement Labor)
Services, Inc., Local)
No. 260)
)
)
INTEREST ARBITRATION)

Essential Licensed)
Supervisors - Sergeants)

BMS Case No. 13-PN-0782)

January 13, 2014)
))

APPEARANCES

For City of Lino Lakes, Minnesota

Scott Lepak, Attorney, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota
Jeff Karlson, City Administrator

For Law Enforcement Labor Services, Inc., Local No. 260

Nick Wetschka, Business Agent
Dale Hager, Sergeant
Kyle Leibel, Sergeant

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 260 (hereinafter "LELS" or "Union") is the exclusive representative for Essential Licensed Police Supervisors - Sergeants (hereinafter "Sergeants") employed by the City of Lino Lakes (hereinafter "City," "Employer" or "Lino Lakes") in the City's Police Department. This LELS bargaining unit includes five Sergeants.

The City and the Union (hereinafter referred to as the "Parties") are signatories to a collective bargaining

agreement that expired on December 31, 2011, and continues in effect by operation of law. The contract also includes a Memorandum of Understanding that extended health insurance for 2012.

The Parties entered into negotiations for a successor 2012-2014 contract. The Parties were able during bargaining and mediation to resolve all issues with the exception of health insurance and wages for 2014. The Parties agreed that the Sergeants would have the same 2013 health insurance language as the Police Officers (also represented by LELS in a separate collective bargaining agreement). The Parties agreed that the Sergeants would receive a general wage increase of one percent (1%) effective July 1, 2012, and an additional one and one-half percent (1.5%) effective January 1, 2013.

On September 13, 2013, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On September 25, 2013, the BMS determined that the following items were certified for conventional interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Wages - What amount of increase, if any, should be applied to the 2014 wage schedule? - Article 18, Appendix A
2. Insurance - What changes, if any, should be made to the insurance plan for 2014? - Article 17.1

The Arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on December 19, 2013, at 9:00 a.m. at the Lino Lakes City Hall, 600 Town Center Parkway, Lino Lakes, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' representatives elected to waive the filing of post hearing briefs, after which the record was considered closed.

BACKGROUND

The City is located in the southeast corner of Anoka County. The City traces its roots back to 1857 with the Township of Centerville. On May 11, 1955, the Village of Lino Lakes was incorporated. In 1972, Lino Lakes became the City of Lino Lakes when the state passed a law changing all Minnesota villages to cities.

The City covers 33 square miles and has an approximate population of 20,746 (2012 census). The City has grown by 23.6% since 2000. The City is classified by the Metropolitan Council as a "Developing" community. Lino Lakes is governed by City Charter. The City utilizes a City Administrator form of government. According to the 2012 Comprehensive Annual Financial Report, the City is anticipating a strengthening economy and is developing infrastructure accordingly.

ISSUE ONE: WAGES – WHAT AMOUNT OF INCREASE, IF ANY, SHOULD BE APPLIED TO THE 2014 WAGE SCHEDULE? – ARTICLE 18, APPENDIX A

ISSUE TWO: INSURANCE – WHAT CHANGES, IF ANY, SHOULD BE MADE TO THE INSURANCE PLAN FOR 2014? – ARTICLE 17.1

POSITION OF THE PARTIES

The Union is proposing a two and one-half percent (2.5%) general wage increase effective January 1, 2014. The Employer is proposing a two percent (2.0%) general wage increase effective January 1, 2014.

The Parties voluntarily agreed that the health insurance benefit for 2013 would be the same as that awarded to the Police Officers in their interest arbitration. This arbitration established the following health insurance:

The Employer will pay for the entire single premium (agreed upon issue).

The Employer will pay for employees with family coverage an amount equal to the prior year 2012 contribution plus or minus one-half of the increase or decrease in the premium for 2013 over 2012.

The HSA contribution will be \$1,000 for single coverage (agreed upon issue) and \$2,500 for family coverage.

The City's final health insurance position for 2014 is as follows:

Effective January 1, 2014, the Employer will contribute 90% toward the premium for single coverage and \$869.72 plus a 50/50 split of the premium increase for family coverage up to a maximum of \$990.41. The Employer's annual contribution for the HSA will be \$750 for single coverage and \$1,500 for family coverage.

The cash option for waiving health insurance coverage will be \$300 per month.

The Union's final health insurance position reads as

follows:

Effective January 1, 2014, Employer will provide health insurance through a consumer-driven health insurance plan with a health savings account (HSA). Employer will contribute one hundred percent (100%) toward premium for single coverage and \$869.72 plus fifty percent (50%) of any premium increase for family coverage. The Employer's contribution for the HSA to be used toward the annual deductible will be \$1,000 for single coverage and \$2,500 for family coverage.

The cash option for waiving health insurance coverage will be \$300 per month.

AWARD

The Employer's position is sustained as to a general wage increase of two percent (2%). The Union's position is sustained as to health insurance.

RATIONALE

In identifying the differences between the proposed wage and health insurance issues, it appears that the Parties are at odds in the following areas:

- a. 0.50% in general wage increase: 2.0% City and 2.5% Union.
- b. City contribution to HSA: \$750/\$1,500 (City) and \$1,000/\$2,500 (Union).
- c. Family insurance maximum City contribution: \$990.41 (City) and none (Union).
- d. Percentage of single health premium paid by City: 90% (City) and 100% (Union).

There are four well-established factors that experienced arbitrators apply in interest arbitration. Those factors are: 1) the employer's ability to pay; 2) internal equity; 3) external or market comparisons; and 4) other economic or non-economic factors.

The first factor for consideration is the City's ability to pay the Union's economic proposals for 2014, which is the only year in dispute. The cost between the Parties' positions with regard to wage and health insurance is approximately \$7,700, with approximately \$2,000 being the difference in wages. Thus, since the Arbitrator awarded in favor of the City as to wages, there remains only a cost difference of approximately \$5,700.

While the City is facing some financial constraints (like most, if not all governmental bodies), the evidence establishes that the Employer is in sound financial health, and has adequate resources with the ability to pay the economic proposals sought by the Union. In fact, the Employer admitted they could absorb the cost of the Union's economic proposals without suffering a serious economic impact upon their budget.

The most reliable City budget data is the 2012 Lino Lakes Comprehensive Annual Financial Report. This Report is the only evidence based on "hard" or "real" figures confirmed by an independent auditor. The Report indicates that the Employer's

assets exceeded its liabilities by 92.3 million, of this amount \$29.7 million (unrestricted net position) may be used to meet the Employer's ongoing obligation to citizens and creditors. The City's net position increased by \$2.2 million; over time, increases or decreases in net assets, may serve as a useful indicator of whether the financial position of the City is improving or deteriorating. The City's unassigned fund balance was \$5.035 million or 56% of the total general fund.

Essentially, there is no ability to pay argument that the Employer can make in this case. In fact, the Arbitrator has reduced the Employer's budgetary exposure by awarding the Employer's wage position, which saves the City approximately \$2,000 and justifies, in part, the awarding of the Union's position with regard to health insurance.

This is a case where the Employer can easily pay for the Union's economic demands, but the lingering issue is whether the Employer should be compelled to do so by the Arbitrator. In other words, since the Employer has the financial ability to pay for the Union's economic demands, the other three factors (i.e., internal and external comparisons and other economic or non-economic factors) have great impact on this case.

With respect to internal equity, the Pay Equity Report submitted on June 6, 2013, indicates that the City employs a total of 62 employees. Of these City employees, only eight are

not represented by Unions. The Sergeants with five members and the Police Officers with 16 members are represented by LELS in separate bargaining units. There is a General City Hall bargaining unit represented by AFSCME Local 2454. This is also a Public Works/Parks Maintenance and Mechanic bargaining unit represented by IUOE Local 49.

While interest arbitrators usually place great reliance upon internal consistency among all employees to resolve both health insurance and wage issues, none of the unionized City employee groups nor non-union employees have agreed to any wage increases or health insurance premium benefits for 2014. Thus, internal comparisons have little value in this case other than to indicate that reference to the City's most recent Pay Equity Report reveals that the Sergeants are \$10.38 per month above predicted pay. In addition, the City's proposed budget for 2014 will incorporate a two percent (2%) general wage increase for all employee groups, which was the percentage awarded by the Arbitrator for the Sergeants. These considerations give credence to the Employer's position on wages since there was no internal wage settlement trend that could have been relied upon by the Arbitrator for guidance on wages.

Internal comparisons also show that Sergeants, in comparison to some other City employees, are already in a

preferred wage position. The City's non-union employees did not receive any general wage increase in 2010 through 2012. The AFSCME General City Hall bargaining unit did not receive any general wage increase for 2010. The Public Works/Parks Maintenance and Mechanic bargaining unit did not receive a general wage increase for 2010. These groups did not receive a general wage increase in 2011. In short, the other non law enforcement City employee groups did not receive a general wage increase for 2010 or 2011. These non law enforcement employees were also furloughed for two weeks as an additional savings measure.

In contrast, the Sergeants were covered by a 2009-2010 agreement that called for a three and one-half percent (3.5%) general wage increase in 2008, an additional three and one-half percent (3.5%) general wage increase in 2009 and a three percent (3%) general wage increase in 2010. The Police Officers also received significant three percent (3%) wage increases as part of a two year 2009-2010 agreement. In response to the economic crisis facing the City in 2010, both law enforcement groups agreed to defer this increase from January 1, 2010 until the first day of the last pay period in December 2010 in exchange for increasing the compensatory time off cap. In short, the Sergeants already enjoy a preferred position relative to the other employee groups in the City. This group should not

receive an additional substantial increase beyond what the other groups can reasonably expect to receive.

Internal equity also supports the Union's position on health insurance. The health insurance received by Police Officers is that received by Sergeants as a result of the Police Officers arbitration decision. The health insurance position proposed by the Union is essentially the same as being currently received by Sergeants and the Police Officers. Thus, maintaining consistency among City bargaining unit employees, especially law enforcement employees, will be maintained if the Police Officers accept what is being awarded to the Sergeants, which is highly likely since the Employer's health insurance position is inferior to that of the Union.

The Parties have not placed great reliance upon external or market comparisons because there are few law enforcement settlements for 2014 in the metropolitan area. While the Parties concede that Lino Lakes is below the average wage of metropolitan cities, given the agreement by the Parties on wages for 2012 and 2013 (one percent (1%) effective July 1, 2012 and an additional one and one-half percent (1.5%) effective January 1, 2013), as well as the half percent difference in final positions, there is no serious dispute that the Parties accept the City's relative position within the external market. Further proof that the members of this bargaining unit are

appropriately compensated compared to the external market may be found by pointing to the ten percent (10%) general wage increase provided to this group from 2008 to 2010. In contrast, the average for Sergeants in other jurisdictions reporting to the League of MN Cities web site showed a total three year average of 9.05% (4.45 in 2008, 2.88% in 2009 and 1.72% in 2010).

The recent percentage wage increases in comparison to other Sergeant groups in the metropolitan area allow the Lino Lakes Sergeants to maintain external market position. Again, based primarily on the timing of the hearing, there are not a substantial number of applicable settlements for 2014. Accordingly, reference to the external market may be broadly viewed by reference to a limited number of arbitration awards, which ranged from 1.5% general wage increase to the City of Forest Lake police officer bargaining unit, to a 2% general wage increase for City of Stillwater sergeants, City of Eveleth law enforcement unit, including sergeants, and City of Wadena.

The last factor for consideration by interest arbitrators is other economic or non-economic factors. The U.S. Department of Labor's Consumer Price Index ("CPI") is typically used as a measure of cost-of-living increases or decreases. The Department of Labor, Bureau of Labor Statistics list of the CPI-U All Urban Consumers from 2003 through the present shows that the first ten months of 2013 has been tepidly moving from a high

of 2% to the most current 0.9% for October 2013. The City's proposed two percent (2%) general wage increase is most consistent with this data.

This factor, as it relates to non-economic considerations was important in deciding the health insurance award. The gist of the Employer's position is that it has provided enough economic incentives "seed money" in recent years that should not be extended into 2014.

In the instant case, the contract language regarding the Employer's single health contribution has been in place since 1999. This language has remained unchanged during bargaining since that date.

The cost to the Employer is not persuasive. In fact, in 2011 the Employer essentially eliminated all other health care plans available to employees except the HSA plan. At the time the Employer was contributing \$549.96 for single coverage and \$1,018.23 for family coverage. In 2011, the Employer contributed 100% of the single premium and half of the \$3,000 deductible. The net result is that employees who need to use their insurance had an additional \$1,500 out of pocket cost that they did not have in 2010. Conversely, the Employer was able to reduce their monthly single contribution to \$476.57 saving \$880.68 per employee per year as compared to 2010. In 2012, the health insurance premiums went down and the savings for the City

went up. They now had a monthly single contribution of \$458.99 or \$1,091.64 less per year than what they paid in 2010. As a result of the Police Officers interest arbitration, the Employer further reduced their obligation to singles by contributing only \$1,000 towards the \$3,000 deductible. As a result, in 2012 the City contributed \$427.34 per month for single coverage. This is the third straight year they paid less for their employee's single health insurance, saving \$1,471.44 per employee over 2010's contribution. Had the Arbitrator awarded the City's position on single insurance, the Employer would be contributing \$433.94, which is still \$116.02 below what they were contributing in 2010. On the other hand, by awarding the Union's position, it would cost the Employer \$496.04 per month or \$53.92 less than what they contributed in 2010. These are truly amazing numbers and a scenario rarely seen - the Employer being able to reduce their contribution towards single health insurance three years in a row and be positioned in 2014 to pay less than they did in 2010 even when the Union's position was awarded by the Arbitrator.

Family insurance is a slight difference historically, but not significantly. The bottom line is that the Employer and the Union differ on the deductible contribution. While the actual cost difference between the Parties' positions on family insurance is minimal, the Employer's proposal increases the

Employee's out-of-pocket exposure by \$1,000 a year should they need to access their health care coverage. The trade-off is simply not fair. The Union's position represents a 10% increase over the Employer's 2010 contribution that is roughly 2.5% increase each year since 2010 that is nominal and somewhat amazing today. The Employer's position would be 6% more than their 2010 contribution or a 1.5% increase each year since 2010. Again, both numbers are not typical, but even with the Union's position being awarded, the Employer is saving significant money, which is unusual in today's health insurance market.

The Employer had a heavy burden of proof that a change is both necessary and reasonable in existing health insurance language. They have not met that burden. If the Employer seeks change in the health insurance language it should be addressed where an equitable quid pro quo can be achieved by the Parties during successor collective bargaining.

Interest arbitrators must be very careful in supplanting what they believe is an equitable quid pro quo for that of the parties. Only after negotiations is fully exhausted during extensive rounds of bargaining should an arbitrator substitute his/her judgment and provide an equitable quid pro quo. One round of bargaining on whether the Employer has provided enough "seed money" for the current health insurance coverage and premiums does not meet the definition of extensive bargaining on

this issue. As a result, the Arbitrator will not provide an equitable quid pro.

The Parties are to be complemented on their professional conduct at the hearing and the comprehensiveness of their oral presentations.

Richard John Miller

Dated January 13, 2014, at Maple Grove, Minnesota.