

IN THE MATTER OF ARBITRATION BETWEEN

Sibley County,

and

Minnesota Public Employees
Association,

Employer,

Union.

**INTEREST ARBITRATION
DECISION**

BMS Case No. 13-PN-0299

Arbitrator: Stephen F. Befort

Hearing Date: February 4, 2014

Post-hearing Briefs submitted: February 18, 2014

Date of Decision: March 11, 2014

Appearances:

For the County: Frank J. Madden

For the Union: Robert Fowler
Joe Ditsch

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota’s Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.30. Minnesota Public Employees Association (“Union”) is the exclusive representative of a unit of essential public safety employees employed by the Sibley County Sheriff’s Office (“County”). The unit consists of fifteen members and includes deputy sheriffs, investigators, dispatchers, and correctional officers.

The parties previously negotiated a collective bargaining agreement (“CBA”) for calendar year 2011. The Union and the County have engaged in negotiations for a successor agreement, but they have been unable to reach a complete agreement. The Bureau of Mediation Services (“BMS”) has certified eight 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

Wages (Issues 2, 3, 4, 5, 6, and 7)

A. Final Positions

i. Union

- \$0.40 general wage increase for 2012, 2% general wage increase for 2013, and 3% general wage increase for 2014.
- 3% merit/step increase for each year of the three-year contract period.

ii. County

- \$0.40 general wage increase for 2012, 2% general wage increase for 2013, and 3% general wage increase for 2014.
- No merit/step increases during the contract period.

B. Discussion

The parties are in agreement as to the amount of general wage adjustments for the proposed 2012-2014 contract. Accordingly, the only wage-related dispute concerns the Union's proposal for an annual 3% increase in merit pay.

Union Arguments

The Union contends that the County has the ability to pay the requested wage adjustments. The Union maintains that the proposed 3% merit increase for this unit would cost the County only a total of \$19,328 in additional expenditures in 2014, which is negligible as compared to the County's overall budget. The Union also points out that County revenues

exceeded expenses by \$2,8 million in 2012 and that the County's undesignated fund balance far exceeded the range recommended by the state auditor.

The Union argues that its position on wages should be evaluated in the context of an economy that now is in recovery. After years of experiencing significant deficits, the State of Minnesota is now projecting a \$1.2 billion surplus. This budgetary turnaround should insure that local governmental units in Minnesota will not continue to experience annual cuts in state aids. In essence, the Union contends that those employees who bore the brunt of the recent recession should now share in the economic rewards provided by the recovery.

The Union asserts that its proposal for annual merit increases finds support in both the existing contract language and in a prior arbitration award. In the parties' 2004-2006 collective bargaining agreement, the parties agreed to replace the former step structure for wage adjustments with a provision calling for merit-based adjustments. In this regard, Section 21.4 states:

Employees will be eligible for [a] step increase on their annual eligibility date on the attached pay scale based upon satisfactory performance. Any step increase that is denied is subject to the grievance process of this labor agreement.

In an interest arbitration proceeding relating to the 2007-2008 contract, Arbitrator Gallagher interpreted this language as calling for a wage adjustment above and beyond any agreed upon market-based general wage adjustment. He characterized this language as "the equivalent of step increases paid for added experience." In the 2011 contract, the parties expressly noted in Section 21.4 that there would be "no range/probation movement" for that contract term. The Union characterizes the 2011 agreement as establishing a special exception to the normal rule providing for annual merit increases.

Based upon this history, the Union argues that Section 21.4 creates a presumption in favor of annual merit increases unless the parties expressly agree to the contrary. The Union additionally argues that a 3% annual merit adjustment has been the historical norm.

The Union urges that the counties within Minnesota Economic Development Region 9 constitute the appropriate external comparison group for this proceeding. Region 9 consists of the following counties: Blue Earth, Brown, Faribault, LeSueur, Martin, Nicollet, Waseca, and Watonwan. The Union maintains that McLeod and Renville Counties should not be included as comparators because they are predominantly rural counties while Sibley County is edging toward inclusion in the Twin Cities metropolitan region. The Union has submitted data showing that unit employees in Sibley County earn only 84 % to 94% of the average starting wage for comparable Region 9 employees, while they are paid at or slightly above the average maximum wage rate. The Union argues that, since the County's practice of freezing merit or step pay makes it very difficult for unit employees to progress toward the top of their respective salary ranges, the starting pay comparison is more relevant and shows that unit employees generally lag behind their Region 9 counterparts in pay.

The Union finally contends that Minnesota arbitrators tend to give too much emphasis to internal comparisons which operates to the detriment of equitable interest arbitration outcomes. In addition, the Union argues that the County has not followed a consistent pattern in setting wages for 2012-14. The Union points out while the County negotiated a 2% general increase for 2013 with respect to the AFSCME highway employees unit, it granted non-represented employees a 1% general increase plus a 1% merit increase for that same period. The Union argues that these two increases are not equivalent since general wage increases initiate at the beginning of the calendar year, while merit increases usually take effect on an employee's

anniversary date of hire. According to the Union, since the County has abandoned internal consistency for 2013, this factor should be discounted in determining wages for unit employees.

County Arguments

The County maintains that it is a predominantly rural county with limited resources. These resources have been particularly stressed during the recent recession and exacerbated further by the substantial cuts in state-funded County Program Aid that the County has experienced since 2008. The continuing negative impact of the recession, the County argues, is illustrated by the fact that the County has used more than 2.7 million dollars of its available fund reserves over the past two years in order to balance the budget. The County also disagrees with the Union's cost estimate of its compensation proposal and alleges that the three-year total cost of both general and merit wage increases requested by the Union will exceed \$153,000.

The County disputes the Union's contention that Section 21.4 of the parties' collective bargaining agreement compels an award of annual merit pay. The County asserts that the merit pay provision adopted in the 2004-2006 agreement is not like a traditional step structure that requires continuous automatic pay increases unless modified, but instead represents a policy of discretionary adjustments dependent upon negotiated funding agreements. The County contends that this characteristic is demonstrated by the fact that the 2011 contract expressly provided in Section 21.4 for "no range/probation movement." The County argues that no award of merit pay is warranted for the 2012-2014 contract term.

The County recommends an external comparison group that includes Economic Region 9 counties plus the contiguous counties of McLeod and Renville. The County claims that this ten county comparison group was approved by Arbitrator Gallagher in the 2007 interest arbitration proceeding and continues to be appropriate. The data generated for this comparison group shows

that while Sibley County unit employees are paid somewhat below average with respect to starting salaries, they receive above average pay at the top of the salary ranges.

With respect to internal equity, the County asserts the existence of a pattern of uniform wage adjustments since at least 2004. The County claims that this pattern continues into the contested 2012-2014 period. The County points out that the only other represented unit in Sibley County, the AFSCME highway unit, settled for the same terms that the County is offering to the Union, namely a \$0.40 general wage increase for 2012, a 2% general wage increase for 2013, and a 3% general wage increase for 2014. The non-represented employees received the same compensation package with a slight variation in that the non-union employees received a 1% general wage increase and a 1% merit pay increase for 2013. The County warns that any award for this unit that deviates from the internal pattern will cause a ripple effect of inequity and discontent.

C. Analysis

Economic Considerations

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 difficult 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.

Section 21.4

The issue raised with respect to Section 21.4 concerns whether this provision, as the Union alleges, is in the nature of a step increase that provides automatic and predictable wage

increases commensurate with length of service, or, as the County alleges, a discretionary reward for merit that is dependent upon the funding measures specified in each individual contract. I believe that the County's construction of this provision should be credited for three reasons.

First, contracts providing for step increases usually specify the amount of increase due at the applicable step points. In this instance, Section 21.4 says nothing about the size of the contemplated merit pay adjustments.

Second, this omission suggests the condition precedent need for a contractual funding agreement. This necessity is borne out by the parties' bargaining history. The 2005-2006 collective bargaining agreement specified a 3% range movement for each year, an arrangement continued by Arbitrator Gallagher's interest arbitration award for the 2007-2008 term. Since the advent of the recession, the parties have agreed to freeze range movement. The most recent 2011 agreement, for example, stated in Section 24.1, "no range/probation movement." This bargaining history suggests that Section 24.1 adjustments are not automatic, but depend upon an affirmative agreement of the parties.

Third, public employers usually utilize step increases on an across-the-board or at least broadly applicable basis. Based upon the evidence submitted at the arbitration hearing, it does not appear that any other County employees will receive step increases for the 2012-2014 period.

Based on these factors, I conclude that Section 21.4 does not compel automatic step increases, and that an award of such increases should depend on the application of the usual interest arbitration analysis.

External Comparisons

Despite disagreement as to the appropriate external comparable group, both parties acknowledge that unit employees are paid below average with respect to starting wages, but are

paid at or above average at the top of the range. The Union contends that the County's position at the top of the range should be discounted since the recent spate of range movement freezes has made reaching the maximum a remote possibility for most unit employees. The County disagrees, arguing that the improving economy should result in a return to greater range movement.

While both parties make plausible assertions, the external comparable factor provides modest support for the Union's position.

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, the County's final offer is substantially consistent with the internal pattern of wage adjustments for the 2012-2014 period. The AFSCME Highway unit, the only other represented group of County employees, settled for the identical package of a \$0.40 general wage increase for 2012, a 2% general wage increase for 2013, and a 3% general wage increase for 2014, with no step or merit increases. The non-represented County employees will receive the same compensation package except that they will receive a 1% general wage increase and a 1% merit pay increase for 2013. While the two arrangements differ slightly in terms of how the 2013 increases are denominated, they both result in an overall 2% raise for most employees.

In general, an award consistent with a public employer's internal compensation pattern promotes labor stability. An award of merit increases for this unit that is not shared with any of the other County employees would breed resentment and result in a demand for "catch-up" adjustments in the future.

D. Award: A \$0.40 general wage increase for 2012, a 2% general wage increase for 2013, and a 3% general wage increase for 2014. The Union's request for additional merit increases is not awarded.

Compensatory Time (Issue 1)

A. Final Positions

i. Union

- Increase maximum accrual to 120 hours per year, and increase maximum carry-over amount to 84 hours.

ii. County

- Retain current maximum accrual of 84 hours per year and maximum carry-over amount of 60 hours.

B. Discussion

The Union seeks an increase in the maximum hours of compensatory time that unit employees are allowed to accrue, as well as an increase in the maximum number of comp time hours that employees may carry over from year to year. The principal argument asserted by the Union in support of this position is that it would enable public safety employees to take much-needed time off from their stressful jobs.

The County claims that such an increase will likely complicate coverage problems since an increase in employees taking leave based on banked comp time will increase scheduling difficulties and overtime costs. The County also submitted evidence showing that the vast

majority of comparable counties allow maximum accrual of compensatory at only 80 hours or less.

C. Analysis

As the party proposing a change in the parties' current contractual arrangement, the Union bears the burden to establish the need for this change. The Union has not carried this burden in this instance. Neither external nor internal comparisons support the proposed compensatory time increases in this instance.

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

Overtime (Issue 8)

A. Final Positions

i. Union

- Seeks to amend Section 8.3 to provide that all unit employees will receive overtime for time worked in excess of their regularly scheduled shift per day.

ii. County

- No change.

B. Discussion

Under the parties' prior contract, most unit employees – including deputies, corrections officers, sergeants, and dispatchers – earn time and one-half overtime pay “for all hours worked in excess of the employee's regularly scheduled shift.” Each employee in these job classifications typically work 12 hour shifts. Two unit employees, however, do not earn overtime on this same basis. The two unit investigators earn overtime only if they work more than 40 hours in a work week. This means that investigators who are called to work after regular business hours do not receive overtime pay if, because of taking sick or vacation leave during that week, their total time worked does not exceed the 40 hour weekly maximum. The Union

contends that its proposal simply seeks to enable the investigators to earn overtime pay in the same manner as other unit employees.

The County opposes the proposed change. The County's rationale is explained in its post-hearing brief as follows: "Unlike other bargaining unit members whose work schedules are variable and include rotating shifts, Investigators work five, 8 hour days Monday through Friday." Since virtually all County employees who work regular eight-hour daily shifts over forty hour workweeks have their eligibility for overtime pay measured by the workweek rather than by the shift, the County argues that the investigators should be treated similarly.

C. Analysis

Here again, since the Union is the proponent of the proposed change, it bears the burden of showing a compelling reason to support such change. I do not believe that the Union has carried this burden with respect to this issue.

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

Dated: March 11, 2014

Stephen F. Befort
Arbitrator