

BEFORE ARBITRATOR SHARON K. IMES

In the Matter of the Arbitration of an Interest Dispute Between

CITY OF CANBY, MINNESOTA

and

LAW ENFORCEMENT LABOR SERVES, INC. (LELS), LOCAL 335

Bureau of Mediation Services Case No. 14PN0563

APPEARANCES:

Nicholas Johnson, City Administrator, City of Canby, appearing on behalf of the City of Canby, Minnesota.

Adam Burnside, Business Agent, LELS, Inc., appearing on behalf of Local 335.

JURISDICTION

The City of Canby (Minnesota) (hereinafter referred to as the City or the Employer) and LELS, Local 335 (hereinafter referred to as the Union) selected this arbitrator to resolve a dispute over the terms of the collective bargaining agreement for law enforcement officers in the City's employ in accord with Minn. Stat. §179A.16, Subd.2 and the procedures of the Minnesota Bureau of Mediation Services.

The parties met on May 27, 2014 in Canby, Minnesota to arbitrate the matter. Both parties were afforded a full and fair opportunity to present their evidence pertaining to the three remaining impasse issues. The parties chose not to file post-hearing briefs but summarized their positions before the close of hearing. Accordingly the record was closed on May 27th and is ready to be decided.

ISSUES

While the Bureau of Mediation Services certified seven issues at impasse on February 21, 2014, LELS notified the City of Canby of its intent to drop its shift differential dispute in Article 16 and its vacation accrual dispute in Article 17 prior to arbitration. Accordingly, the following issues remain in dispute:

Article 15, Section 15.2 - compensatory time - maximum accrual.

Article 16 - amount of general increase, if any, in the 2014 wages.

Article 16 - amount of general increase, if any, in the 2015 wages.

Article 21, Section 21.1 - amount of City contribution to VEBA, if any, in 2014 insurance.

Article 21, Section 21.1 - amount of City contribution to VEBA, if any, in 2015 insurance.

BACKGROUND

The City of Canby, approximate population of 1,750, is located in southwestern Minnesota. According to census data, the City's population has slowly declined from approximately 2,150 in 1960 to 1,800 in 2010. The City employs approximately twelve people and has three bargaining units. The instant patrol unit consists of two officers. The parties' most recent previous labor agreement between these parties covered January 1, 2013 through December 31, 2013. The contract whose terms are in dispute covers January 1, 2014 through December 31, 2015.

Both parties presented evidence addressing the City's financial condition; the current economic climate affecting the Employer, including CPI data regarding the cost-of-living, and information for internal and external comparables. In addition, both argued the merits of whether there should be an Employer contribution to VEBA.

Following, item by item, are the issues remaining in dispute between the parties; the parties' relative positions and arguments and the arbitrator's analysis and decision.

ISSUE: WAGES

CITY'S OFFER:

16.1	Step		2014 (1.5%)	2015 (1.5%)
	1 (Probationary Period)	First Year	\$17.37	\$17.60

2	Second Year	\$18.47	\$18.75
3	Third Year	\$19.64	\$19.93
4	Fourth Year	\$20.78	\$21.09

There will be a one and one half percent (1.5%) general wage increase for 2014.

There will be a one and one half percent (1.5%) general wage increase for 2015.

UNION'S OFFER

16.1	Step		2014 (2%)	2015 (2%)
	1 (Probationary Period)	First Year	\$17.42	\$17.77
	2	Second Year	\$18.56	\$18.94
	3	Third Year	\$19.74	\$20.13
	4	Fourth Year	\$20.88	\$21.30

There will be a two percent (2%) general wage increase for 2014.

There will be a two percent (2%) general wage increase for 2015.

ARGUMENTS OF THE PARTIES

Stating its tax base is mostly residential; that its population is declining; that the census data shows the City's poverty rate, at nearly 25% of its population, is above the Minnesota average, that its total tax base has decreased while the tax rate has increased, and that it can't just focus on "now" but must look to the future and how it will pay for future improvements, the City states that it does not have an inability to pay the Union's proposal on wages but that it wants to keep its tax rate as level as possible. As proof its position, it submitted a document it prepared which showed that between 2005 and 2012, the poverty level for City residents has increased from approximately 10.1% of all residents to 21.7% of its residents and a document it prepared which showed the tax rate increasing between 2007 and 2012; slightly decreasing between 2012 and 2015 and then increasing again between 2015 and 2016. It also stated that property taxes went up in 2014 not only because of the cost of resources and employees but also as a result of an infrastructure project and added that it expected to have more infrastructure improvements in the next few years. Further, addressing its budget and reserve level, the City declares that while its unassigned fund balance, which falls within the recommended range of budgeted operating expenses for cash flow timing needs, is available for any purpose but is primarily used to pay daily bills.

As for its wage proposal, the City declares that the increase will result in its officers receiving a wage rate that probably falls in the 50th percentile area when compared with wage

rates paid officers in Minnesota cities with populations of 1,000 to 3,000 and that their pay is comparable to that paid other officers in similar sized cities in the State. In addition, the City asserts that its wage proposal is consistent with the cost of living increase reflected by the increase in the Consumer Price Index (CPI) during 2014 as well as the Employer Cost Index (ECI) average for private industry workers in the area.

The Union, however, argues that its wage proposal is more reasonable not only because the economy, both nationally and in Minnesota, is improving but because the 2014 City budget shows continued growth in city revenues and projects a \$76,000 budget surplus for the year. As support for its position it provided Kiplinger's Economic Outlooks dated May 2014; data from Minnesota Management and Budget reflecting its economic and budget outlook dated February 2014 and April 2014; data concerning the unemployment rate in Minnesota which shows unemployment levels decreasing; data from the US Department of Commerce showing Minnesota's median household income has gone up since 2010 and exceeds the 2007 median household income, and, finally, CPI-All Urban Consumers data which shows the 2013 annual percentage increase at 1.5% and an increase to 2.0% in April, 2014. With respect to its argument regarding the City's budget surplus, the Union submits the City's Audit Report dated December 31, 2012 which shows that 66% of the City's ending balance, \$899,980, constitutes unreserved fund balances available for spending at the City's discretion and submitted the auditors' notes which indicate it is the City's policy to maintain a minimum unassigned fund balance ranging between 35 and 50% of budgeted operating expenditures for cash flow timing needs and that the City's unassigned fund balance of the general fund was 73% of the subsequent year's budgeted expenditures.

More specifically addressing its wage proposal, the Union declares that its proposal is supported by the internal and external comparisons and that the City has the ability to pay the increase. Internally, the Union points to the fact that the City has settled with its IBEW bargaining unit at 2% both in 2014 and in 2015 as proof its proposal is reasonable and notes, further, that the City's administrator received an 8% increase in salary in 2013 and a 7.36% increase in salary in 2014. Externally, the Union provided data for all city police departments located in the Economic Region 6 West and from 10 cities in the State closest in population to this City. Based upon this

data, it notes that the cities in the economic region are averaging 2.47% wage increases and that not a single city settlement is below 2%. It also notes that state-wide the 2014 and 2015 general wage increases will exceed 2% over that period of time and that the norm is 2%. As for the City's ability to pay, the Union declares that the City is currently in compliance with Minnesota's Pay Equity Act and that there is no indication that the Union's proposal would put the City out of compliance. It also asserts that since the Union's proposal is only \$1,292.23 greater than the City's proposal and is only 0.04% of the City's unreserved fund listed in the 2012 audit, the City has the ability to pay the Union's requested wages for 2014 and 2015.

DISCUSSION

Interest arbitration becomes a part of the collective bargaining process when strikes and related job actions are precluded by law in order to formulate an agreement the parties would have achieved had they been able to continue negotiating and engage in a work stoppage, if necessary, in order to reach a voluntary agreement. Over the years, in Minnesota, since the passage of the Public Employment Relations Act, arbitrators deciding interest dispute in Minnesota have tended to consider four primary factors: ability to pay; internal consistency; external comparables, and other factors such as cost of living, recruiting, retention problems, and pay equity compliance. More recently, since the Minnesota legislature passed the Local Government Pay Equity Act, some arbitrators have viewed internal consistency as the most important factor when deciding wage issues, benefits and other terms and conditions of employment finding that an award reflecting terms of the internal settlement pattern most often reflects the bargain the parties would have struck and that a deviation from an internal pattern may cause undesirable ripple effect in future rounds of bargaining. While this arbitrator agrees with this reasoning as cited by the others and often considers the internal settlement factor to be persuasive, she does not necessarily find internal consistency to be the most important factor since voluntary settlements reflect a give and take between the parties during bargaining which may be relevant only to their particular relationship.

In this dispute, with respect to the wage rate adjustment, the City has argued that its offer of a 1.5% increase in wages both in 2014 and 2015 is reasonable even though its settlement with

one of its other two bargaining units reflects a 2% increase in wages in both years since the 2% increase reflects the agreement it reached with that unit to cap the amount of time which can be accrued for overtime compensation and since its proposal is supported by the CPI percentage increase in 2014. Further, it maintains that while it does not have an inability to pay the wage increase sought by the Union, its economic circumstances, together with its intent to initiate several infrastructure projects in the near future suggests its needs to be frugal in the amount of money it compensates its employees. These arguments are not persuasive.

First, although the City correctly states that its proposal more accurately reflects the percentage increase in the annual CPI for 2013, there is not enough evidence to establish this unit should be paid a lesser percentage than that which the City voluntarily agreed to with one of its other bargaining units based upon a "quid pro quo" achieved during bargaining. While the City asserts it settled with its IBEW unit in exchange for language which placed a cap on the accumulation of compensatory overtime, there is no evidence in the record to support this assertion. Without such evidence and/or without proof that the City has made the same bargain with its professional employee unit, it cannot be concluded that the IBEW wage adjustment percentage was the result of a "quid pro quo", particularly when the record shows that employees in all three of the City's bargaining units received the same percentage increase in wages in 2011, 2012 and 2013.

In addition to the internal comparisons, other factors considered include the settlements reached with other employees performing similar work in both the local economic region and state-wide; compliance with the Minnesota Pay Equity Act and the City's ability to pay. With respect to the external comparisons, a review of the settlements in the local economic region and settlements state-wide indicates that a 2% wage adjustment in each of the years 2014 and 2015 is the norm. In this respect, it is particularly relevant that employees performing similar work in the two cities closest in population to this City which are located in the same economic region as this City, Dawson and Appleton, granted their employees a 2% and 2.5% wage rate increase in 2014. Further, there is no evidence that either proposed increase in wages will cause the City to be out of compliance with the Minnesota Pay Equity Act.

Finally, while the City's assertion that it needs to be frugal deserves merit, the record indicates that the difference between the amount offered by the City and the amount sought by the Union will do little to affect the City's financial condition. Further, the December 31, 2012 audit of the City's finances indicates that the City has a substantial unreserved fund balance available for spending at its discretion, a balance that exceeds the percentage recommended by the State Auditor and by the City's own policy. In addition, the record indicates that the City has not only increased its tax levy to fund a current infrastructure project but that it intends to undertake other projects in the near future for which it may need to levy taxes. While one cannot ignore infrastructure needs, the extent to which the City is considering such projects indicates it believes there will be growth in the City's tax base and that an increased tax levy will not substantially harm its citizenry. These facts suggest that an increase in wages as proposed by the Union will not have a substantial impact upon the City's planned projects.

AWARD

For the reasons cited above, the Union's proposal regarding wages is found to be more reasonable and is awarded.

ISSUE: COMPENSATORY TIME

CITY'S OFFER:

Add the following language:

Article 15 - Hours of Work

15.6 An employee may not exceed 120 hours of compensatory time. Any time accrued as compensatory time must be paid out if the 120 hour maximum is reached. Current accrued compensatory time above the 120 hour maximum will be dealt with one of two ways chosen by the individual employee.

1. The employee may choose to have their accrued compensatory time over 120 hours paid out down to the maximum.
2. The employee may choose to keep their accrued compensatory time and use it as time off until the amount reaches 120 hours. Any new compensatory time earned during that time will be paid out. If by the end of this agreement's term (12/31/2015), an employee choosing to keep their compensatory time as time off does not exhaust their excess over 120 hours then the remainder shall be paid out.

UNION'S OFFER:

No change to current language regarding compensatory time.

ARGUMENTS OF THE PARTIES

The City maintains that while there is a federal cap on the amount of overtime an employee may accumulate as compensatory time there is no cap on compensation in the current collective bargaining agreement the cap might result in a huge liability for a small city and its auditors suggested that a cap with a lower limit be proposed to limit that liability. It adds that its proposal should be adopted since it is consistent with its internal comparables and cites the fact that it bargained this change in language in the 2014-2014 contract with the IBEW unit and that it has been told by its employees who are members of MAPE that the same cap is agreeable to them even though the MAPE contract has not yet been settled. Further, the City charges that the change would not harm the employees in this bargaining unit since they have consistently accrued more comp time than they have used and since they would be able to maintain the 120 hour cap even if they used accrued compensatory time and since they would be paid for all hours accrued over 120 hours.

The Union maintains, however, that the federal government already sets a cap on the amount of compensatory time patrol officers may accumulate so no cap is needed. Further, it declares that the City's claim of potential economic hardship is faulty based upon the fact that the City has the authority to limit an employee's ability to accumulate compensatory time and that the cost to the Employer is the same since excess hours which lead to compensatory time are paid out either in cash for time worked or in time off from work. It also asserts that if there is a problem with employees carrying too much compensatory time on the books the problem does not exist in this bargaining unit since the employees in this unit do not accumulate nearly the hours accumulated by other City employees and are far from the top of the compensatory time table. Finally, the Union rejects the City's argument that its proposal is supported by the internal comparables noting that the language was only recently bargained by one of the three bargaining units and the settlement with that unit does not establish internal comparability. It also declares that disputes over adding new language are better left to negotiations between the parties and cites the arbitrator in AFSCME Council 65 and Carver County, BMS Case No. 10-PN-4213 (2011)

who suggested he was not convinced an internal settlement pattern should dictate the outcome of an impasse in another bargaining unit in support of its position.

DISCUSSION

While this arbitrator believes that internal comparability is only one factor to consider when consider wage rate increases, internal comparability is far more important when it comes to establishing non-economic issues which are set by contract with certain caveats. Among the caveats is that the party seeking change from the internal consistency may present evidence that the settlements were an anomaly; that it was secured for a concession (a quid pro quo), or that conditions resulting in the change have been dramatically altered. Further, there might be a showing that the change sought is common among employees performing similar tasks in similar bargaining units.

In this dispute, there is no evidence that the changed proposed by the City has internal consistency or that it is common among bargaining units externally comparable. At the time of this hearing only one of the City's three bargaining units had agreed to the change in language. Further, the record establishes that if there were a need to establish a lower cap the need was greater in the IBEW bargaining unit than in the other two bargaining units since the IBEW employees appear to regularly accumulate more overtime and, thus, more compensatory time than the others. There is evidence in the record which shows that three IBEW members accumulated over 158 hours of compensatory time in 2013 and that the accumulated time ranged from 158.25 hours to 316.75 hours. In comparison, the patrol officers accumulated 125.75 hours and 209.5 hours and if the City to be believed, they do not, in any given year, use all of the compensatory time accumulated.

It is not uncommon to require a "compelling need" be shown and/or that a quid pro quo has been offered in justify a change in benefits. In this case neither was shown. While the City states that the current federal cap might result in a huge liability for a small city, it failed to show how that would happened or that the time accumulated by its officers was creating a financial difficulty for it. Further, it failed to offer a quid pro quo for the change it seeks. Where it has suggested that it had given members of the IBEW unit a 2% increase in wages in exchange for the language, it only offered the officers 1.5% and sought the change as well. Further, given the fact

that the change in the IBEW contract occurred in the current round of negotiations; that the issue was raised for the first time with this unit during the current round of negotiations, and that there is no evidence of internal consistency with respect to this benefit, it is more appropriate that the issue be returned to the parties for further negotiations

AWARD

For the reasons cited above, the Union's proposal regarding compensatory time is found to be more reasonable and is awarded.

ISSUE: CITY CONTRIBUTION TO VEBA

CITY'S OFFER

No change to current language.

UNION'S OFFER

21.1 Health Insurance: The Employer will provide a health and medical care insurance program to all employees. Employer will pay 100 of the premium for single coverage and 75% of the premium for dependent care coverage. Any reduction in levels of benefits or change in insurance carrier will be negotiated with the Union. The City shall make VEBA contributions for each Employee. An Employee with single coverage shall receive \$1000 annually and an Employee with dependent care coverage shall receive \$2000 annually.

ARGUMENTS OF THE PARTIES

The Union states that for years, the City paid a Volunteer Employer Benefit Account (VEBA) contribution of \$800 for single coverage and \$1,600 for family coverage to offset the cost of the deductibles and the employee contribution toward health insurance and that both officers in this unit received \$800 for the years it was available. It continues that "coupled with the lowest-in-the-region pay and the offer of the lowest-in-the-region wage increase for 2014" and the rising cost of insurance these employees are losing ground financially and that the contribution is warranted. The City, however, declares that the VEBA contribution should not be awarded since it was bargained out the collective bargaining agreements of all three units and that the last time it was given was in the year 2010.

DISCUSSION

It is undisputed that the VEBA contribution which the City made was bargained out of the collective bargaining agreement in 2010 and that the last VEBA contribution was made in that year. Given the fact that the cost of health insurance has gone up since then one can understand why the Union members would seek to reinstate the VEBA contribution. There is no evidence, however, to support reinstatement. None of the other City's bargaining units have this benefit and the record does not establish that the parties negotiated over its reinstatement and/or that a quid pro quo was offered. It is not uncommon for parties to want to reinstate benefits previously given up but without evidence of the willingness to enter into a give and take in order to secure the benefit again, it is unreasonable to expect reinstatement through interest arbitration.

AWARD

For the reason cited above, the City's proposal with respect to the health insurance provision is found to be more reasonable and is awarded.

SUMMARY OF AWARD

Having considered the four criteria identified earlier in this discussion and the record as a whole, the contract whose duration extends for calendar years 2014 and 2015 shall incorporate the provisions of the predecessor agreement; any tentative agreement the parties may have reached that modified that agreement and the Union's proposal regarding wages and compensatory time and the City's proposal regarding Insurance.

Dated this 26th day of June, 2014 in La Crosse, Wisconsin.

Sharon K. Imes, Arbitrator

SKI: