

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

THE ST. PAUL POLICE FEDERATION

Interest Arbitration

B.M.S. Case No. 14-PN-0040

-and-

THE CITY OF ST. PAUL, MINNESOTA

**Before: Jay C. Fogelberg
Neutral Arbitrator**

Representation-

For the Union: Jim Michels, Attorney

For the City: Frank Madden, Attorney

Statement of Jurisdiction-

In accordance with the Minnesota Public Employment Relations Act ("Act"), the Commissioner of the Bureau of Mediation Services for the State of Minnesota ("Bureau"), certified three (3) issues at impasse in connection with the parties' (new) 2013-15 Collective Bargaining Agreement, on October 17, 2013. The certification followed a declaration of impasse, and an agreement by the parties to submit the outstanding issues to binding arbitration pursuant to the provisions of M.S. 179A.16, subd. 2. Subsequently, the undersigned was notified that he had been selected as the Impartial Arbitrator to hear evidence and arguments concerning the outstanding issues, and to

thereafter render an award. A hearing was convened on April 15, 2014, in St. Paul, and continued on April 16 and again on May 9, 2014. Thereafter the parties indicated their preference for submission of written summary briefs which were received on 5, 2014, at which time the hearing was deemed closed.

Preliminary Statement-

This matter arises from an impasse that has been certified by the Bureau earlier last year between the St. Paul Police Federation (hereafter "Union," "SPPF," or "Federation") which represents some 635 bargaining unit members made up of sworn police officers, Sergeants, and Commanders, as well as non-sworn personnel consisting of Dispatchers, and Telecommunicators¹ employed by the City of St. Paul ("City," "Employer," or "Administration").

The parties have engaged in good faith collective bargaining for several decades. However, they have now reached an impasse over the issues identified here, and consequently their dispute has been appealed to binding arbitration for resolution.

¹ The record demonstrates that in 2007 the City's Emergency Communications Center ("ECC") merged with the Ramsey County ECC who now manages the merged operation. However, those who were employed by the City at the time, remain employees of St. Paul and members of the bargaining unit represented by the Federation.

The Issues-

1. Wages – General Wage Adjustment for Calendar Year 2013
2. Wages – General Wage Adjustment for Calendar Year 2014
3. Wages – General Wage Adjustment for Calendar Year 2015

Issue Nos. 1, 2 & 3 Wages

Federation's Position: For the term of the new Agreement, the Union has proposed a general salary adjustment for all members of the bargaining unit in 2013 of 1.5% effective June 15th of that year, and an additional increase of 1.5% effective December 15, 2013. For the second year of the Contract, they seek a general wage increase of 3.6% to be divided into two effective dates: June 15th and December 15th 2014. For calendar year 2015, the SPPF proposes a general wage adjustment of 4.1%, to be implemented in two equal installments, effective June 15th and December 15th of the final year of the new agreement.

City's Position: The Employer counters with a general wage proposal of 1.5% in 2013, with 1% implemented on April 1st of that year, and the balance (.5%) on October 1st. In the second year of the contract they are offering a 2% wage adjustment for all classifications effective April 1, 2014. For the final year, their position calls for a 2% general increase again, to be

applied on April 1, 2015.

Analysis of the Evidence: In arriving at what is believed to be a fair and reasoned decision concerning the issues that have been certified at impasse, I have given careful consideration to the applicable provisions of PELRA which requires the reviewing neutral to examine such factors as the obligations of public employers in this state to efficiently manage and conduct their operations within the legal limitations specified, the interest and welfare of the public they serve, the ability of the City to fund any wage increase, the effect of the respective proposals on the standard of services provided, as well as the ramifications any award might have in connection with other classifications of employees, and the power of the City to levy taxes and appropriate funds for the conduct of its operation.

At the outset, a number of salient facts have been established through documented evidence submitted, along with acknowledgements expressed by the parties in the course of the hearing. It is essentially uncontested, for example, that pay equity issues are not truly present in connection with the parties' impasse, as the City is currently in compliance with the MPEA, and an award of either side's final position would not create any conformity issues with the Act through the life of the new contract. In addition, while the Employer has advanced a number of reasons why the Federation's final position should not be awarded, and

characterized the problems attendant to implementing it as being fiscally irresponsible which would result in a significant structural imbalance among the bargaining units within the City, it has not made a specific claim for an inability to fund their final position. Further, neither side has put forward an argument that the cost of living directly impacts their respective positions.

In addition to the above, I find the following evidence to be well-established on the record and accordingly has been taken into consideration here in formulating the award:

- There are thirteen non-trade bargaining units in the City. The SPPF is the only union who has not settled their 2013-15 contract.
- LGA to the Employer has not been reduced since 2011, and they received an additional \$10.1 million in FY 2014.
- Serious crime in St. Paul has dropped to its lowest level in more than thirteen years.
- For the 2008-10 term of the parties' labor agreement and again for the 2011-12 agreement, the Union has settled for wage adjustments that mirror the other bargaining units in the City.²
- The Union made concessions in negotiating the aforementioned (2) agreements during the severe economic downturn that became known as the "Great Recession" which at the time, was having an adverse affect on the entire country and more particularly public employers.
- For 2013-15, the previous strict "pattern" of internal

² For the 2011-2012 Agreement, the Federation agreed to a wage freeze along with the other twelve non-trade bargaining units.

settlements has changed. While eight bargaining units agreed to the same wage adjustments, five did not. Those that departed from the model however, made other concessions, some of which were related to non-economic issues.

- For each of the Police Department's last two recruitment efforts, there have been over seven hundred (700) applicants.

While the forgoing data has been factored in when formulating the award made here, I have discounted both the Union's and the Administration's compensation models relied upon in part in the course of advancing their respective arguments.

The Federation contends that the concept of "career earnings" is the best metric when evaluating external markets for comparison purposes. According to the SPPF, both the bargaining history of the parties – dating back to the 2004-05 settlement - as well as the 2007 Lundberg award serve to establish benchmarks based on career earnings that can be used to determine what external relationships are the best fit when compared to the earnings of St. Paul Police personnel. The term, as used by the Union, is not a measurement of wages to be earned by an individual officer over his/her career. Rather, it is intended to gauge the aggregate of earnings at different levels of seniority at a given point in order to achieve what it terms a true "apples to apples" comparison among differing external wage schedules.

The evidence shows however, that the metric has not been utilized by the parties consistently over time. While it apparently played a part in the negotiations some ten years ago, and was included in Arbitrator Lundberg's deliberations in 2007, it has not otherwise been a significant ingredient relied upon at the bargaining table. I would agree with the Administration that the Union's system is flawed to the extent that it ignores promotions and/or premium assignments that various officers in a number of comparable municipalities might have achieved over the life of their career. Further, it is unclear whether the Union's reliance on the model has changed over the years moving from a definition of the aggregate earnings of a singular patrol officer from year one on the job to year thirteen (City's Ex. 16a) to an aggregate of thirty officers at each of the benchmarks. Moreover, there was no evidence proffered indicating that other jurisdictions used the same model as a means of supporting their respective positions on compensation.

Likewise, I am reluctant to assign any significant weight to the City's adoption of the "Aitchison" model as a measuring stick for external comparisons. Developed to calculate total compensation costs for employers, it has been utilized in jurisdictions where consideration of total compensation is mandated by statute (Employer's Ex. 47b). As the Federation points out, no such statute exists in Minnesota. Moreover, as

acknowledged by the City's Labor Relations Specialist, Ben Reder, on cross-examination, no other jurisdiction in the state uses the Aitchison model as a means of gauging the reasonableness of any particular wage position *vis-à-vis* external comparisons.

The City's own observation expressed in their summary brief is most appropriate: the adoption of such specific models or formulas is best left to the parties through the give and take at the bargaining table, rather than imposing one or the other by a third party through the impasse process.

Distilled to its essence, this dispute centers on the weight to be given to internal settlements already in place versus external comparisons. The emphasis on the former increased with the onset of the Great Recession in the third quarter of 2008, as public employers began implementing wage freezes on their work force in addition to instituting significant layoffs in the face of declining revenues. Since that time, particularly in Minnesota, either zero wage adjustments or minimal increases, coupled with other concessions, became wide spread in the public sector. This developing "pattern" could not be ignored and when coupled with the mandates of the Minnesota Pay Equity Act, has routinely been given every consideration by third party neutrals addressing impasse disputes going forward.

The approach taken by this arbitrator has been no different. I have authored more than one award endorsing the internal settlement

argument advanced by employers in the interest arbitration setting over the past half-dozen years, finding a demonstration of such a consistent voluntary pattern, to be a significant element in my deliberations. At the same time however, I have held that a reviewer cannot be blind to other statutorily mandated factors in the course of examining wage and benefit issues certified at impasse, as to limit consideration solely to what other bargaining units working for the same employer settled for would have a chilling effect on collective bargaining as well as the impasse resolution process itself. PELRA does not allow an employer to unilaterally determine whether there will or will not be additional monies paid to members of a bargaining unit simply by setting a budget in advance of negotiations, reaching identical or nearly identical settlements with more than one union, and thereafter remaining completely inflexible at the table.

Factoring in what other comparable cities pay their law enforcement personnel, is most certainly an important and relevant element within the process and one that has been instrumental for decades under PELRA. It is not, however, the only one. In this particular instance, the uncontested evidence demonstrates that twelve of the thirteen non-trade bargaining units have settled for the same or very similar wage and benefit adjustments for the 2013-15 contract term; the lone exception being the Police unit. There is also compelling evidence in the record revealing that

of the four bargaining units who have negotiated enhanced wage increases over the three years under consideration, thereby breaking from the “pattern,” have not done so without trade-offs. The *quid pro quo* for the Firefighting unit, for example, was the elimination of a sick day. The AFSCME legal unit received an additional 1% adjustment in their wages, but gave up retiree health insurance and some compensatory time. Similarly, the Manual & Maintenance Supervisors negotiated an additional 1.5% wage increase on the top twenty year step of their schedule in return for the elimination of retiree health insurance (City's Ex. 37). This uncontested evidence, while debunking the assertion of a uniform settlement pattern, is nevertheless illuminating. There is no dispute but that the SPPF's final position does not entertain any similar concessions.

The bargaining history of the parties fails to establish a blueprint for consistency as to what weight has been given to internal settlements with other units, versus the external market. Over the past twenty-plus years, the parties have agreed upon only two wage and benefit packages that reflected the internal settlement model – the 2008-10 contract and again for 2010-12 (Union's Exs. 11-39; City's Exs. 14 & 16). Significantly, both of those agreements came in the midst of the severe economic downturn.

In 2004, on the other hand, the parties agreed upon wage adjustments for the law enforcement personnel that exceeded the

increases given to other bargaining units (Federation Ex. 22). At that time, according to the testimony of Union witness and former Deputy Mayor Dennis Flaherty who was involved in the process, the City recognized that its police officers were in need of a market adjustment. It's stated goal then was to have its police force ranked within the top ten departments within the comparable grouping in the metro area. More particularly, the Administration had its eye on wages paid to Minneapolis law enforcement employees (*id.*).

In the succeeding agreement for calendar year 2006, the parties reached another negotiated settlement that included wage adjustments that did not altogether mirror internal settlements. Rather, the accord again reflected concern with the rank of St. Paul Police Officers wages, when compared to the law enforcement bargaining unit in Minneapolis, and the attempt to remain competitive.

In both instances however, the Union agreed to concessions with the City that brought its members' benefits more in line with other metro police officers in 2004-05, while varying the wage increases in 2006 at selected steps on the schedule that did not contain the bulk of the bargaining unit membership. This was in opposition to a blanket across-the-board adjustment negotiated by the other internal bargaining units (SPPF Exs. 19-22). Moreover, under cross-examination at hearing Mr. Flaherty

acknowledged that parity with Minneapolis Police wages was not a “model” that he directed be continued beyond the 2004-05 contract term.

The parties are reasonably close in their respective estimates of what an implementation of the Union's versus the City's final positions would cost. The Federation's position would result in a wage expense to the Employer over the life of the contract of approximately \$1.8 million beyond what the Administration has proposed (Union's Exs. 132-138; Employer's Exs. 30-36). The SPPF's position is back-loaded, meaning that for the first year of the new agreement their proposal is approximately \$15,000 under the City's. However, by year three the Union's final offer grows to over \$1.3 million more than the Employer's. Both sides have employed wage increase “delays” within each calendar year for the purpose of controlling costs. The final year of the Administration's offer would take effect in April while the Union's proposal would not occur until mid-December of 2015, resulting in a significant carry-over (“tail”) in calendar year 2016.

The normal approach taken by advocates involved in the impasse process, finds the bargaining unit claiming the employer has the ability to fund their proposal without having an adverse effect on their general fund balance, while the employer counters that an implementation of the union's position would result in a significant erosion of their financial health and is contrary to responsible accounting practices. The respective

positions of the parties in this instance are no different. The Union claims that the City's general fund reserves are healthy level with an excess in reserves of 23% over its annual budget which is well beyond the "manageable" threshold of the 15% policy the Administration claims is needed. Further they argue that the Local Government Aid payments to the City have not only stabilized following the recession but have actually increased, noting that in 2014 St. Paul received an additional \$10 million in LGA from the State.

The City counters that the \$10 million increase in LGA for 2014 did help to fill an equal sized gap in the budget, but outside of a small increase projected for next year, the additional monies which they receive from the state and which is so very important to their funding, will be flat. They further argue that currently Local Government Aid makes up approximately 25% of the general fund revenues (Employer's Ex. 29) whereas in 2003, the LGA represented some 42% of the fund's proceeds. However, in 2004 and thereafter, municipalities began to experience significant decreases in financial aid from the State. In addition, they point to the sound financial practices followed since Mayor Coleman was elected in 2006, bringing financial stability to a budget during economically challenging times through prudent accounting practices, including reduced expenditures, in order to maintain what it terms "structural

balance." This did not occur however, without raising property taxes. Between 2006 and 2014 they maintain the tax levy has been increased an average of over 5% each year. Through these efforts the City has been able to achieve the highest ranking bond rating (AAA) from Standard & Poors and have helped to improve financial stability for the City.

The Fitch Report prepared by the City to present to potential municipal bond purchasers (Federation's Ex. 143) reflects the favorable results brought about through the Coleman Administration's efforts. It points out, among other facts, the stabilization of LGA after years of reduced state aids; the improved real estate market in the City which includes declining foreclosures in 2013; a drop in office vacancy rates in downtown; new projects including construction of a \$63 million ballpark, and; the redevelopment of the "central corridor." At the same time however, it makes note of the increase in General Fund reserves which it attributes to "...underspending on General Government and *Public Safety Salary costs*" (*id.*, at p. 43-44; emphasis added). At hearing, the Administration's financial expert Scott Cordes, testified that he prepared the report and acknowledged its factual accuracy.

I have also taken into consideration wages paid by other municipalities of similar size and geographic proximity to St. Paul to their police force. While the internal wage pattern here is significant and

warrants due consideration, it does not follow that settlements with other bargaining units representing City employees excludes examination of the external markets. This is especially so given the nature of police work. By definition, public safety employees occupy unique positions with job requirements that do not closely parallel most other assignments within a municipality's work force as much of what is expected of them is potentially life-threatening.

In the course of my deliberations I have primarily considered wages and benefits paid by the City of Minneapolis to their law enforcement personnel, given the history of the parties and the acknowledgement at one time that St. Paul wages for their police force needed to be more competitive with Minneapolis, as well as what other cities in the Greater Metropolitan area were paying their police officers. The relative weight given to this evidence however has been compromised somewhat given the considerable dichotomy between the respective compensation models utilized, the variances in the length of the contract term, and the fact that some of the municipalities have not settled for 2015.

What has been demonstrated however, is that in 2012 the annual salaries of Minneapolis and St. Paul officers as a whole were relatively competitive at both ends of the schedule (Employer's Ex. 56a; Federation's Ex. 90). Indeed, the long term comparison (1981-2012) has remained

reasonably close for top patrol rates with the exception of the earlier years in the last decade (City's Ex. 57). What has been awarded here is believed to fairly preserve the basic relationship between the two cities while at the same time taking into consideration the health insurance benefits St. Paul employees receive, which both sides agree is superior to the external market by nearly any measurement. While it does not track the internal settlements exactly from year to year, it is nevertheless believed to be fair and most reasonable when all factors are considered.

Finally, I conclude that this award will not open any "me too" flood gates from other bargaining units in the City thereby having a chilling effect on future negotiations. Indeed, the Employer could cite no situation in which one union's wage increase was based on a prior arbitration award granted to another bargaining unit.

Award: Based on the foregoing analysis, I award the following wage adjustments for all job classifications in the bargaining unit:

Retroactive to April 1, 2013, a 1% rate increase
Retroactive to October 1, 2013, a 0.5% increase
Retroactive to April 1, 2014, a 2% rate increase
Effective April 1, 2015, a 2.75% rate increase

Respectfully submitted this 5th day of July, 2014.

/s/ _____
Jay C. Fogelberg, Neutral Arbitrator