

IN THE MATTER OF ARBITRATION BETWEEN

McLeod County, Minnesota
“Employer”

BMS Case No. 14 PN 0367

and

Decision and Award

Minnesota Public Employee’s Association
Licensed Deputies
“Union”

John W. Johnson
Arbitrator

Date of Hearing:

July 11, 2014

Post Hearing Briefs Submitted:

July 28, 2014

APPEARANCES

For the Union:

Robert Fowler, Attorney

Joe Ditch, Attorney

For the Employer:

Frank Madden, Attorney

STATEMENT OF JURISDICTION

The hearing was held in the above manner on July 11, 2014 in the McLeod County Courthouse, Glencoe, Minnesota. The Arbitrator, John W. Johnson, was selected by the parties pursuant to the Minnesota Public Employment Labor Relations Act, as amended (PELRA).

At the hearing each party was given the opportunity to present evidence and arguments. The parties elected to submit post hearing briefs, received by the arbitrator on July 28, 2014.

ISSUES

The parties negotiated to impasse on a collective bargaining agreement for calendar years 2014 and beyond. Twenty nine unresolved issues, and the parties’ final positions on each, were submitted to the Minnesota Bureau of Mediation Services (BMS), and certified by the BMS for arbitration. Of these 29, 14 issues were resolved prior to the arbitration date, leaving 15 issues before the arbitrator. These issues will be identified in this award by their original numbers as presented initially to the BMS.

The 15 remaining issues are:

1. Wages 2014 – General Wage adjustment for 2014 including effective date; Including Range Movement – Appendix A
2. Wages 2015 – General Wage Adjustment for 2015 including effective date; Including Range Movement – Appendix A
3. Wages 2016 – General Wage Adjustment for 2016 including effective date; Including Range Movement – Appendix A
4. Wages – Education Supplement – New
5. Wages - Increase in Investigator On-Call Supplemental Pay – New
6. Wages – Emergency Response Unit Supplemental Pay – New
8. Wages – Specialty Trainer Supplemental – New
9. Wages – General Adjustment Eligibility – Article 26, New
10. Longevity – Longevity Pay – New
12. Insurance – Employee Opt Out Payments – MOU
18. Holiday – Amount of Premium Pay for Hours Worked on Holiday – Article 19.3
19. Education Incentive – Tuition Reimbursement – New
21. Overtime – Hours included for Overtime Calculation – Article 13.1
24. Sick Leave – FMLA Leave – Article 15, New
28. Duration – Length of Contract – Article 29

Since the Duration issue (Issues 28) affects issue 4, wages for 2016, Duration will be addressed first, then issues 1, 2, and 3, and 9, covering wages for the years 2014, 2015, and 2016, followed by the other issues.

ISSUE 28- DURATION

Position of Employer: The Agreement would be effective as of the 1st day of January, 2014, and shall remain in full force and effect until the 31st day of December 2016, or until a new agreement is adopted by the parties. Retroactive pay and benefits, if agreed to , shall be paid only to employees employed as of the date of Union ratification of the successor collective bargaining agreement. [changes underlined]

Position of Union: The Union proposes a two year contract, for calendar years 2014 and 2015, without the Employer's proposed addition regarding retroactive pay and benefits.

The union argues for a two year agreement on the basis that essential units are disadvantaged by an approach public employers take that first establishes a pattern of consistent settlements among non essential units, and then uses that pattern as an argument for consistency among all settlements. A two year agreement would allow this bargaining unit an opportunity in the next round of bargaining to negotiate for years beyond the three year term of other McLeod County bargaining units, before those units negotiate for those years, thus freeing it from the influence of a pattern already established for those years.

The employer, on the other hand, argues for consistency in duration among all McLeod County bargaining units. All other units have reached three year agreements, covering calendar years 2014, 2015, and 2016. The employer points out that historically, all McLeod County labor contracts have been for the same duration.

This bargaining unit has the same opportunity to negotiate as the other units that have already settled three year agreements. These include essential units. This unit's desire to get a head start on the next round of bargaining does not outweigh the advantages of consistency in the duration of agreements with the same employer. Therefore the term of this agreement will be for three years, calendar years 2014, 2015, and 2016.

Regarding application of retroactive pay, I see it as being legitimately included under duration. It is also pertinent that 5 of the 6 other bargaining units that have settled for 2014 through 2016 have agreed to this language. It is generally accepted among arbitrators that the role of an arbitrator in interest arbitration is to determine what the parties would have negotiated had their negotiation concluded successfully. Since 5 of the six other six bargaining units have already agreed to this language, it is reasonable to believe that this bargaining unit would also have included this language in a negotiated agreement. Further, it makes sense that an employer should not have to seek out former employees in order to provide them with a retroactive pay adjustment.

Award

The contract term will be from January 1, 2014, through December 31 2016. The Employer's proposed language on retroactive pay will be included in the agreement.

ISSUES 1, 2, 3, AND 9 – WAGES 2014, 2015, AND 2016, PLUS GENERAL ADJUSTMENT ELIGIBILITY

Union Position:

In each year of the agreement, a two percent (2.0%) general wage (COLA) increase for all employees, effective January 1 of the year, plus an additional three percent (3.0%) increase, up to the range maximum, for those employees below the maximum of the wage range, effective on that employee's anniversary date.

Employer position:

A.. General wage increase

0% General wage increase for 2014, 2015, and 2016.

B. Range minimum and maximum

Increase range minimum by 5.0% and increase range maximum by 3.0% in 2014.

C. Range movement

2014 Effective December 29, 2013, 2.0% plus \$.20 per hour range movement for employees not at the salary maximum, and a one time lump sum payment of 2.0% plus \$.20 per hour for employees at the maximum.

2015 Effective December 28, 2014, 2.0% plus \$.20 per hour range movement for employees not at the salary maximum, and a one time lump sum payment of 2.0% plus \$.20 per hour for employees at the maximum.

2016 Effective December 27, 2015, 2.0% plus \$.20 per hour range movement for employees not at the salary maximum, and a one time lump sum payment of 2.0% plus \$.20 per hour for employees at the maximum.

Discussion

In determining wage awards in interest arbitration, arbitrators have considered the employer's ability to pay, internal comparisons of wage increases for other groups of employees employed by the same employer, external comparisons of wages and wage increases for comparable employees of comparable employers, and other economic factors, such as changes in the cost of living. Also, Minnesota Statutes Section 471.992, subd.2, requires interest arbitrators to consider what effect an award would have on pay equity. Regarding pay equity, the parties have shown that pay equity for employees of McLeod County would not be compromised by either the Employer's or the Union's proposed wage settlement. Therefore pay equity will not be addressed further.

Ability to pay

Both the Employer and the Union presented extensive information about McLeod County's financial history and current circumstances. The Employer emphasized that McLeod County's population has increased less than 5% in the last decade, that the County has lost industry, that there have been weather related difficulties for farmers in the County, that the recent economic downturn has resulted in a loss of state aids that have still not been restored, and that the County's fund balance is needed to provide

funding for several anticipated projects, and, the employer argues, should not be used to fund ongoing costs, like salary increases. The Union, on the other hand, argues that the County would easily be able to absorb the difference in cost between the Union's proposal and the County's, and that in fact, the County is doing well financially, as evidenced by the size of its fund balance . I conclude from the information presented, that although the County has legitimate concerns about prudent fiscal management, ability to pay is not an issue that needs to be further addressed in this arbitration.

Internal and External Comparisons

The employer argues that since 5 of the other 6 bargaining units, , representing 79% % of the represented employees of the County have settled for the same wage package as the employer's final position in this arbitration, and since the Deputies bargaining unit represents only 9% of the represented employees of McLeod County, Employer Exhibit 25, this established pattern should be controlling in determining the award in this arbitration, absent some convincing reason to do otherwise. The employer further argues that there is no such reason The employer provides information showing that comparing McLeod County Deputies with deputies employed by the counties that have been used in the past as a comparison group on the basis of a "weighted average" salary, the McLeod County deputies are within the range of those averages, higher than three of the comparisons, and lower than three. Employer Exhibits 52 and 53. Reviewing the information in employer Exhibit 52 shows, by my own calculation, that in the years from 2007 through 2013, McLeod County deputies received general wage increases of approximately 15%, including compounding, while the average increase for the other

comparable Counties was approximately 14%, also including compounding. So based on information provided by the Employer, McLeod County has kept pace with comparable counties in its wage increases over the last several years, and currently is within the range of average hourly wages paid among those same comparable counties.

In support of its position, the union argues that the Counties that have been used as comparisons in the past are no longer the best comparison, but that a different, more urban set of counties should be used. The comparison group traditionally used consists of Brown, Kandiyohi, Meeker, Nicollet, Renville, and Sibley Counties, all of which are close to McLeod geographically.. A number of Arbitrators have accepted this group as appropriate. The group advocated by the Union consists of Brown, Kandiyohi, Cass, Otter Tail, Freeborn, Mower, Rice, Crow Wing, Steele, Goodhue, and Douglas Counties. The Union contends that since Hutchinson, a city in McLeod County, has been designated a “micropolitan statistical area,” by the Federal Government, McLeod County should be compared to other counties containing cities so designated.

The Union is correct in asserting that a comparison group that has been used in the past may not necessarily continue to be appropriate as circumstances change over time.

However, I do not find that the comparisons advocated by the union are more appropriate. They include two counties, Crow Wing and Rice, that are each more than 70% larger than McLeod County.

The Union presented exhibits comparing average salary of McLeod County deputies to maximum salary of both the counties that have been used in the past as a comparison

group, and the “micropolitan” counties, in its effort to show that the McLeod County deputies are significantly underpaid, and more underpaid when compared to the “micropolitan” counties. The Union asserts that the comparison of McLeod County average pay to the salary maximums of other counties is appropriate on the basis that hardly anyone ever gets to the range maximum for McLeod County. . In its post hearing brief, the union discounts the employer’s weighted average comparison, stating that it is not sufficiently supported with detailed information about actual salaries paid to deputies employed by the other counties being compared.

If the Union’s position were awarded for 2014, 2015, and 2016, the salary range minimum and maximums would each go up by approximately 6.1% over the three year period (two percent for each of three years, plus compounding) and the individual wage of each employee would rise by approximately 15.7 % (five percent in each of three years plus compounding) except when such increases brought the employee’s wage to the range maximum.

The employer’s proposal for the same three years raises the range minimum by 5% and the range maximum by 3%, and provides pay increases of approximately 8.7% over the three year period. I derived the 8.7% figure by first compounding a 2% increase for each of three years, which results in a figure of 6.1%, then adding the percent equivalent of .60 per hour added to the average salary, which rounds to 2.6% whether you use to employers weighted average of \$23.00 per hour or the Union’s average of \$22.72 per hour. In addition, the employer’s position would result in lump sum payments for any

employee who reached the range maximum before all the increases over the three year period were applied.

Where an internal pattern of settlements is established, it should be given considerable weight, and deviated from only where there is a convincing reason to do so. I don't find that convincing reason in the evidence presented. I'm not persuaded that the situation of McLeod County has changed enough to justify a new external comparison group. I accept the employer's exhibit comparing weighted averages of the Deputies salaries in the previously used comparison group, which shows that based on wages actually paid, McLeod County is competitive. I do not think comparing average pay of McLeod County Deputies to salary range maximums is an appropriate comparison. It makes more sense to compare averages to averages.

AWARD

For the reasons stated above, I award the employer's position on Issues 1, 2, and 3, and 9.

ISSUE 4 – EDUCATION SUPPLEMENT

This is a new provision proposed by the Union, which would provide a pay differential of 3% to employees with a bachelor's degree. In arguing for the addition of this benefit, the union points out that Social Workers employed by McLeod County receive a pay differential of 3% if they have a masters degree, and states that it would benefit the County to have Deputies with an bachelors degree, and that the addition of this benefit would encourage deputies to obtain a degree.

The employer argues that there is no justification for this proposed change, since none of the other six bargaining units, including the Correctional Officer/ Dispatcher unit represented by MNPEA include a provision for additional compensation for holding a bachelor's degree, and none of the employers in the historical comparison group provide this benefit.

When new contract terms are proposed in interest arbitration, the party proposing the change has the burden to show that there is either a quid pro quo, that is, something given in exchange for the requested change, or that there is substantial justification for the requested change. Arbitrator Miller has stated:

It is axiomatic in interest arbitration that a party proposing a change in existing contract language shall have the burden of proof in establishing that there is a substantial problem with the language and its proposed change is necessary, reasonable and will effectively resolve the problem. Thus the party proposing the language has the burden of showing the need for the change or a “quid pro quo” for the change.” Law Enforcement Labor Services and City of Blaine, BMS Case No. 10-PN-0956 (Miller 2010)

Arbitrator Wallin, cited by the Employer, views the proposer's burden as requiring a showing of both a compelling reason for the proposed change, and a quid pro quo, in order to justify a proposed change. Law Enforcement Labor Services Inc. and County of Scott, BMS Case No. 96-PN-1938 (Wallin, 1996). I agree with Miller's view, that one or the other are required, but not both. I do however, see Miller's “substantial problem” as comparable to Wallin's “compelling reason”

With respect to this proposal from the Union, I do not find either substantial justification or a quid pro quo. I therefore award the employer's position.

ISSUE 5 – INCREASE IN INVESTIGATOR ON SUPPLEMENTAL PAY

The Union proposes to increase the on call supplemental pay from \$275.00 per week to \$300.00 per week. The employer opposes this change.

The Union argues that the circumstances for on call have become more demanding, and provided testimony from Investigator Joe Oliver in support of this. The Union further points out that Social Workers, who also receive on-call, are receiving an increase in their on-call pay over the course of their 2014-2016 three year contract, and that social workers sometimes get called to the same cases, when they work on child protection issues. The evidence presented shows however, that the Social Workers on call pay will still be less than the Deputies', rising to \$246 in 2016.

The Employer provides information to show that Deputies employed by the Counties in the historical comparison group do not receive on call pay comparable to what the Union is proposing. Employer Exhibit 64.

I do not find either a substantial reason to make this change, or a quid pro quo. I therefore award the employer's position.

ISSUE 6 – EMERGENCY RESPONSE UNIT SUPPLEMENTAL PAY

This is a new benefit proposed by the Union. The employer opposes this change.

The proposed benefit is for an extra \$1.00 per hour for hours worked on call-outs for the Emergency Response Unit (ERU) The Union states that there is extra risk of bodily harm to Deputies who perform these services, so they should receive more pay. The Union further argues that not all the comparison counties even have an ERU or its equivalent, so it's difficult to make comparisons.

The employer argues that members of the ERU are already eligible for additional pay of 1 and ½ tome for a minimum of three hours if called to duty during their scheduled off duty time. Further, the Employer argues that the ERU has existed since the late 1980's, and that there has not been a need for the proposed extra pay. Also, the employer points out that none of the comparison counties provide this benefit.

As with the proposed addition of an Education supplement, the Union has the burden to show evidence of either a substantial reason to add this benefit. or a quid pro quo. I find the Union has not met this burden. Therefore, the employer's position is awarded.

ISSUE 8 – SPECIALTY TRAINER SUPPLEMENTAL PAY

This also is a new benefit proposed by the Union, also opposed by the Rmloyer.

The proposal is to extend the current differential of \$1.50 per hour currently paid to Field Training Officers (FTO's) who are qualified, and designated as FTO's by the Sheriff, for all hours in which they work as FTO's. The proposed extension would include deputies

“certified to teach or train fellow employees in specialty courses, i.e., First Aid/CPR, TASER, Firearms, or Defensive Tactics,” when performing that function. Union Final Position. The Union’s rationale for this proposal, as stated in the union’s post hearing brief, is that except for the setting, there is little difference between the training functions. In both cases, trainers are required to achieve a high level of skill proficiency, and are responsible for the course materials and curriculum. The County benefits from achieving a higher level of skill for the trained employee, and from having its own personnel train the employee, since some of these courses are required for deputies to maintain their post license.

The employer argues that the Union’s proposal is not supported either by the bargaining history of the parties, or by external comparisons. Employer Exhibit 71.

Again, the Union has the burden to show either a substantial reason for its proposed change, or a quid pro quo. I find that the union has not met this burden. I therefore award the employer’s position.

ISSUE 10 – LONGEVITY PAY

This is also a new benefit proposed by the union, also opposed by the employer. It addresses what the Union stated in the arbitration as its primary concern; movement through the salary range. The proposal is that employees who have received the following years of continuous full time employment with the employer shall receive a

3.0% premium on pay every five years, in addition to base wages and applicable overtime, according to the following schedule:

10 years	3.0%
15 years	6.0% (3.0% + 3.0%)
20 years	9.0% (3.0% + 3.0% + 3.0%)

The Union states that this item is an alternative to its wage proposal for Issues 1, 2, 3, and 9, and provides another way of moving employees through the pay range based on their experience. The employer counters by pointing out that no other employees of McLeod County have a longevity pay provision, that among the external comparables, only one has longevity pay, and that its longevity pay provisions are considerably less than what the union proposes. Further, The Employer cites several Arbitrators in support of its point that arbitrators have historically refused to impose new longevity systems through interest arbitration.

Based on the above, I award the employer's position

ISSUE 12 – INSURANCE OPT OUT PAYMENTS - MOU

For 2014, the County and all but one of the bargaining units representing County employees entered into a memorandum of agreement allowing employees to opt out of the health insurance offered by the County. Employees who elected to opt out received the difference between the County's contribution toward single coverage under the Bronze plan and the premium cost of the Bronze single health insurance plan. The Deputies bargaining unit proposes that this provision be incorporated into the collective bargaining agreement for all three years of the agreement. The employer opposes this.

The Employer relies on internal consistency in support of its position. Further, the Employer states a concern that the insurance environment is changing with the implementation of the Affordable Care Act, and does not wish to be locked in to a three year opt out provision.

The Union seeks to incorporate the benefit it has bargained in the MOU into the three year contract in order to maintain it, and to avoid repeated bargaining over this provision.

I am persuaded by the Employer's consistency argument. The County has maintained a consistent insurance package for all employees over time, and the one year memorandum of agreement maintains that consistency, for all county employees except for the one bargaining unit that did not agree to enter into the MOU at all.

The County's position is awarded

ISSUE 18 – HOLIDAY – AMOUNT OF PREMIUM PAY FOR HOURS WORKED ON HOLIDAY

This is a proposal from the union to increase holiday pay from time and a half to double time for hours worked on Labor Day, Independence Day, Memorial Day, Christmas Day, and Thanksgiving Day. Time and one half would still be the rate for other holidays, under the union's proposal. The Employer proposes no change. The union's argument for this change is that the increased compensation will relieve some of the pressure Deputies feel as a result of having to work holidays. The employer's argument against

increasing this benefit is that neither bargaining history, internal comparisons or external comparisons justify the change.

Again I find that there is neither a substantial reason, nor evidence of a quid pro quo for increasing this benefit. I therefore award the employers position.

ISSUE 19 – EDUCATION INCENTIVE - TUITION

This is a new benefit proposed by the union. The employer opposes adding this benefit.

The requested new benefit is to provide tuition reimbursement in the amount of up to \$1.000 per year for approved courses toward an undergraduate criminal justice degree.

The Union's justification for this proposal is that it provides an incentive to employees to work toward earning a bachelor's degree, which in the Union's view, would benefit both the individual employees who take advantage of it, and the County, through having a better educated work force.

The Employer's opposition to adding this benefit is based on the following: 1) the Collective bargaining agreement already provides for payment for up to 16 job related credit hours per year for each employee, 2) Internal comparisons do not support the Union's position, in that no other County employee has this benefit, Employer Exhibit 195 and 3) external comparisons show that none of the employers in the traditional comparison group have this benefit. Employer Exhibit 106

The Union has not shown either a substantial reason, or evidence of a quid pro quo, or any comparison data to support its position. I therefore award the Employer's position.

ISSUE 21 OVERTIME CALCULATION

The employer proposes to change Article 13.1 as follows: [addition underlined]

“Full time employees will be compensated at one and one half (1 ½) times the employee's regular base pay for hours worked (not including sick, vacation, floating holiday or compensatory time) in excess of the employee's regularly scheduled shift. Voluntary changes of shift do not qualify an employee for overtime under this Article.”

The employer's stated rationale for this change is that is simply a clarification of existing language, in that overtime is based on “hours worked”, and the addition simply clarifies what are hours not worked that are not included in the calculation.

The Union opposes this change, arguing that it is not just a clarification, but a substantive change, which could result in an employee not receiving overtime compensation in situations where they now do.

Applying the standard articulated by Arbitrator Miller, the Employer has the burden to show either a substantial reason for the proposed change, or a quid pro quo. I find the Employer has not met this burden. I therefore award the Union's position.

ITEM 24 – SICK LEAVE – FMLA LEAVE

This is a change proposed by the employer. It would change the Sick leave Article to include the following: “In circumstances where Family and Medical Leave Act (FMLA) applies, the use of sick leave will run concurrent with FMLA.”

The employer explains that the proposed language is consistent with the way FMLA leave is administered for all County employees, and that the county’s position does not modify the way FMLA has been administered for employees in the Deputies bargaining unit.

The Union points out that there are some differences in the way FMLA is administered, as shown in the Employer’s Exhibits 111 and 112. Some contracts reference the County policy, which requires that employees reduce their sick leave bank to 80 hours before going on unpaid time, except for employees receiving short term disability payments. Others have the language proposed by the Employer for this contract. The administration of FMLA leave does not appear to be consistent, based on these exhibits.

Once more the standard articulated by Arbitrator Miller applies. The Employer has the burden to show either a substantial reason for the proposed change, or evidence of a quid pro quo. I find that the employer has not met its burden. I therefore award the Union’s position.

Dated: August 21, 2014

John W. Johnson, Arbitrator