

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION
)
 between)
) Department Heads and
 City of Hibbing, Minnesota) Supervisors
)
 -and-) BMS Case No. 14-PN-0534
)
 Minnesota Association of)
 Professional Employees) September 15, 2014
))

APPEARANCES

For City of Hibbing, Minnesota

Bruce R. Williams, Attorney, Williams Law Office, Virginia,
Minnesota
Tom Dicklich, City Administrator
Theresa Tourville, Human Resources Director
Patrick L. Garrity, Clerk-Treasurer

For Minnesota Association of Professional Employees

Kelly Ahern, Business Agent
Dan Holub, Executive Director
Jesse Story, Local President
Peter Hyduke, Director of City Services
John Sporer, President, AFSCME Local No. 791

JURISDICTION OF ARBITRATOR

Minnesota Association of Professional Employees
(hereinafter "MAPE" or "Union") is the exclusive representative
for Department Heads and Supervisors employed by the City of
Hibbing (hereinafter "City" or "Employer").

There are 11 MAPE bargaining unit members at the present,
which hold the title of Internal Auditor, Cemetery Sexton and
Sanitation and Storm Foreman, Finance Director, City Engineer
and Public Works Director, Chief of Police, Fire Chief, Library

Director, Director of City Services, Waste Treatment Supervisor, Sanitation and Streets and Alleys Foreman, and Building Official.

The City and MAPE (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining agreement that was effective January 1, 2011 through December 31, 2013, and continues in effect by operation of law.

The Parties entered into negotiations for a successor three year 2014-2016 collective bargaining agreement. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on March 14, 2014, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On May 28, 2014, the BMS determined that the following items were certified for conventional interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Wages 2014 - Amount of General Increase? - Article 3, Section 3.1.3
2. Wages 2015 - Amount of General Increase? - Article 3, Section 3.1.3
3. Wages 2016 - Amount of General Increase? - Article 3, Section 3.1.3
4. Longevity - Additional Amounts For 2014? - Article 9, Section 9.4
5. Insurance 2014 - Plan Description and Employer Contribution? - Article 5
6. Insurance 2015 - Plan Description and Employer Contribution? - Article 5

7. Insurance 2016 - Plan Description and Employer Contribution? - Article 5
8. VEBA 2014 - Amount of Employer Contribution? - Article 5
9. VEBA 2015 - Amount of Employer Contribution? - Article 5
10. VEBA 2016 - Amount of Employer Contribution? - Article 5
11. Severance/Retirement - Eligibility and Amount? - Article 3, Section 3.3
12. Layoff Notice - Number of Days Notice Required? - Article 9, Section 9.4
13. Uniform Allowance - Amount for Police Chief and Fire Chief? - New

The Arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on August 20, 2014, at 9:30 a.m. in the Labor Room at the Memorial Building Arena, 400 East 23rd Street, Hibbing, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' representatives elected to file electronically post hearing briefs, with an agreed-upon submission date of September 4, 2014. The post hearing briefs were submitted in accordance with those timelines, and exchanged by the Arbitrator on September 5, 2014, after which the record was considered closed.

ISSUE ONE: WAGES 2014 - AMOUNT OF GENERAL INCREASE? - ARTICLE 3, SECTION 3.1.3

ISSUE TWO: WAGES 2015 - AMOUNT OF GENERAL INCREASE? - ARTICLE 3, SECTION 3.1.3

**ISSUE THREE: WAGES 2016 - AMOUNT OF GENERAL INCREASE? -
ARTICLE 3, SECTION 3.1.3**

**ISSUE FOUR: LONGEVITY - ADDITIONAL AMOUNTS FOR 2014? -
ARTICLE 9, SECTION 9.4**

**ISSUE FIVE: INSURANCE 2014 - PLAN DESCRIPTION AND EMPLOYER
CONTRIBUTION? - ARTICLE 5**

**ISSUE SIX: INSURANCE 2015 - PLAN DESCRIPTION AND EMPLOYER
CONTRIBUTION? - ARTICLE 5**

**ISSUE SEVEN: INSURANCE 2016 - PLAN DESCRIPTION AND
EMPLOYER CONTRIBUTION? - ARTICLE 5**

**ISSUE EIGHT: VEBA 2014 - AMOUNT OF EMPLOYER CONTRIBUTION?
- ARTICLE 5**

**ISSUE NINE: VEBA 2015 - AMOUNT OF EMPLOYER CONTRIBUTION?
- ARTICLE 5**

**ISSUE TEN: VEBA 2016 - AMOUNT OF EMPLOYER CONTRIBUTION?
- ARTICLE 5**

UNION POSITION

A wage increase of \$.80 per hour effective January 1, 2014.
A wage increase of 2% plus \$.30 per hour effective January 1,
2015. A wage increase of 2.25% plus \$.30 per hour effective
January 1, 2016.

The longevity change is for all active MAPE employees as of
January 1, 2014. This does not replace the current longevity
schedule in the contract. All levels will be allowed one
readjustment during the duration of the contract. (This
represents a one-time 1% longevity increase for everyone under
20 years of service. Employees over 20 years of service will
have a one-time increase of \$0.30 added to their base.)

<u>Years of Service</u>	<u>Longevity Percentage</u>
1-5 years	0%-1%
5-8 years	1%-2%
8-10 years	2%-3%
10-15 years	4%-5%
15-20 years	6%-7%
20 years and over	8% plus \$0.30 added to their base wage

Insurance 2014 - \$1500/\$3000 85/15% Premium
Insurance 2015 - \$1200/\$2400 85/15% Premium
Insurance 2016 - \$1200/\$2400 80/20% Premium

Maintain the current language contained in Article 5,
Insurance, Section 5.4, Retiree Health Insurance.

VEBA 2014 Single and Family Coverage - 85%
VEBA 2015 Single and Family Coverage - 85%
VEBA 2016 Single and Family Coverage - 85%

CITY POSITION

A wage increase of 1.5% effective January 1, 2014. A wage increase of 1.5% effective January 1, 2015. A wage increase of 1.75% effective January 1, 2016.

Maintain the current longevity schedule contained in
Article 3, Section 3.5, Longevity, as follows:

<u>Years of Service</u>	<u>Longevity Percentage</u>
5 years	1%
8 years	2%
10 years	4%
15 years	6%
20 years	8%

Insurance 2014 - \$1500/\$3000 85/15% Premium
Insurance 2015 - \$1200/\$2400 85/15% Premium
Insurance 2016 - \$1200/\$2400 80/20% Premium

Revise Article 5, Section 5.4(b), Retiree Health Insurance,
to read as follows:

Retiring on or after January 1, 2007:

1) For all active employees who retire on or after January 1, 2007, who were hired after June 1, 1989 and who at the time of retirement have fifteen (15) years of service with the City and who at the time of retirement are qualified to receive benefits provided by the Public Employees Retirement Act, the City shall pay the following:

- a. Eighty-five percent (85%) of the monthly hospital/medical insurance premium for single coverage until the retired employee becomes eligible for Medicare, with the retiree paying the remainder of the monthly premium, for the hospital/medical insurance plan offered by the City to active employees. All employees retiring after January 1, 2016 the City shall pay eighty percent (80%) of the monthly hospital/medical insurance premium for single coverage until the retired employee becomes eligible for Medicare. Upon the retired employee becoming eligible for Medicare, the retiree shall be enrolled in the Medicare Supplement Plan, (Medica Prime Solutions or equivalent) with premium participation split based upon the same premium split paid when the employee retired from City service; and

Additional Health Insurance Language to be added in Article

5:

The Employer and Union will meet and negotiate while this contract is still in force and effect any component of group health insurance specifically addressed in this Agreement or otherwise requiring meeting and negotiating if changing, establishing or eliminating such component is necessary to comply with the law or the effects of such law on the component are substantial as determined by either party.

VEBA 2014 Single and Family Coverage - 85%
VEBA 2015 Single and Family Coverage - 85%
VEBA 2016 Single and Family Coverage - 85%

AWARD

The Union's position is sustained.

RATIONALE

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

The first factor for consideration is the City's ability to pay the Union's economic proposals for the three-year period of 2014, 2015 and 2016, the duration of this contract.

The Union's costing analysis calculates the cost of their demand for increases in wages, including longevity, to be approximately \$75,187 over the cost of the City's proposed wage increases (which does not include a longevity increase). This difference does not include any associated roll-up costs (e.g., social security tax, pension increase, etc.).

The City cites, in regard to their ability to pay for the Union's proposed wage increases, including longevity, the following:

1. City Exhibit #25, which is the City's Truth in Taxation statement, indicates on page 3 that based on the 2014 Proposed General Fund Expenditures, the City will pay approximately \$7,695,000 in wages for all City employees. This amounts to 44.8% of total expenditures of \$17,169,668. The City will also have to expend \$2.9 million in insurance for employees, worker's compensation and liability insurance. Another \$4.3 million will be spent on operations as well as a transfer of \$829,000 to the OPEB fund, which is currently underfunded by over \$5 million

based on the recommended standards. In addition, the City will have to pay \$1.3 million for insurance for retirees and debt service on approximately \$10 million of bonding.

2. City Clerk/Treasurer Pat Garrity testified that the City did pass an increase of 3.25% over the 2012 levy which collected \$193,157. The City is doing everything financially feasible to keep up with increasing costs and at the same time balance its responsibility to the citizens to be fiscally sound.

3. The City's Human Resources Director, Theresa Tourville, testified that the City has moved to a more cost-efficient consumer-directed health plan. Specifically, she testified how the City is moving to a consumer-directed health plan, which has been accepted by City employees. All changes were effective January 1, 2014 through December 31, 2016. Unfortunately, due to a break-down in communications during collective bargaining with MAPE, they were unable to get on the \$1200/\$2400 deductible CDHP health plan until 2015. The benefit for the City in obtaining a \$1200/\$2400 deductible plan is that while there are no savings on the premium, the City did get a 1% reduction in the increase for 2014 by going with a true CDHP health insurance plan.

4. Union President Jesse Story noted that the City had a fund balance of \$994,273 after deducting total expenditures from total revenues. However, this balance must be considered in light of health cost of \$4 million, surprised retirements which increase the dollar amount for retiree health care, unforeseen costs such as the lift station that cost \$80,000, underfunding of the OPEB fund, which could cost the City over \$34 million in the next thirty years, and how LGA is based on the legislature and who has the power in the legislature at any given time.

5. The City has a population base of approximately 16,000 people. The median household income is \$37,137. In contrast, the average gross wage (from actual 2013 W-2's) for a MAPE employee is \$73,634 for 2013. This includes eleven holidays and two personal days. The median price of a home in Hibbing is \$92,600. There are approximately 39% to 48% of the children in the Hibbing school district that receive a free lunch and 9% receive a reduced lunch. Approximately 30.64% of the households in Hibbing are sixty-five and older. Thus, taxes need to be affordable

for the demographics of Hibbing. The City relies heavy on LGA and Taconite Production Taxes. This is unique to Iron Range Cities.

The above evidence proves that the City is facing some financial constraints, but has the ability to pay for the Union's economic demands. However, the Arbitrator strongly agrees with City Clerk/Treasurer Garrity that the City does not have the ability to pay an increase in wages far above what the other unions settled for outside the pattern of internal consistency. Thus, one or more of the other factors used by interest arbitrators (i.e., internal and external comparisons and other economic or non-economic factors) control the outcome of each outstanding impasse item.

With respect to internal equity, the Union has proved beyond a reasonable doubt the evidence necessary to sustain their position as it relates to wages, including longevity, health insurance (plan description and Employer contribution) and VEBA.

AFSCME Local No. 791 is by far the largest union in the City with over 70 members. In addition to MAPE with 11 members, there is the Hibbing Professional Firefighters, Local No. 173, IAFF and the Hibbing Police Federation. AFSCME and the IAFF have voluntarily agreed to contracts for 2014-2016.

Through good and bad economic times one internal bargaining pattern has held true - MAPE has received the same pay and

benefits as that negotiated by AFSCME. This relationship has endured since at least 2001 and well beyond that time.

AFSCME has historically taken the lead in nearly every round of negotiations since they are the largest union and has the ability to strike unlike the other unions. MAPE's relationship with AFSCME is highly interrelated. MAPE members supervise all of the AFSCME employees and there is a long history of cooperation and mutual respect. However, in this round of negotiations with MAPE the City attempted to break away from this widely known and established internal settlement pattern with AFSCME.

MAPE negotiations have always functioned as a "me too" bargaining arrangement. For example, since the years 2001 to 2013, MAPE and AFSCME received the exact same settlement in terms of wages, insurance and VEBA contributions. The Arbitrator's award with respect to these issues adheres to this long and well-established bargaining relationship between MAPE and AFSCME.

While at first blush, the MAPE proposals look different than the AFSCME settlement, they are in fact the same based upon percentage. Union Exhibit #11 shows that the MAPE proposal took the 2013 average base wage and mirrored the percentages in the AFSCME settlement to get an overall increase of 9.63% over the three years of the contract. In fact, AFSCME is even higher

than MAPE at 10.57%. The math is the same, the percentage is equivalent.

The City suggested during their presentation that since mid-term pay adjustments were received by MAPE members in the past that these wage increases should now be factored into any wage increase for the three year period of this contract. As Clerk/Treasurer Garrity testified, they made pay adjustments in the last few years, some for comp worth adjustments to the Police and Fire Chiefs and some were for additional job duty assignments, which included the combining of supervisory positions. A total of 7 of 10 Union members received an average pay increase of approximately \$2,500 for each year and for a total of \$30,000/year for each and every year in the future contracts. The pay increases were negotiated with MAPE officials and respective employees. The City cooperatively agreed. The job evaluations were done with full understanding of those involved in this process. The record is devoid of any agreement made between MAPE officials, MAPE members and the City that would mandate that mid-contract pay adjustments stemming from job restructuring for some MAPE members would later require the entire MAPE bargaining unit to accept a lesser wages and/or benefits in their next contract.

There is conclusive evidence that MAPE attempted to become part of the new proposed \$1200/\$2400 deductible with 85/15

percentage Employer-employee cost split insurance plan in 2014 that was accepted by AFSCME and IAFF. It is undisputed that there was confusion between the Parties about getting into the new proposed 2014 insurance plan. The enrollment periods changed many times that resulted in not being able to change to the new insurance plan until 2015. This was not the fault of any particular Party, but only a reality that collective bargaining sometimes takes longer than anticipated, which resulted in not being able to get into the new insurance plan until 2015.

As to the insurance plan design and Employer contribution for 2015, the Union agreed with the City's position for a \$1200/\$2400 deductible with a 85/15 percentage split, which was accepted by AFSCME and IAFF. For 2016, the City, along with MAPE, AFSCME and IAFF all agreed to a \$1200/\$2400 deductible with a 80/20 percentage split.

Both MAPE and AFSCME agreed with the City's position to have the Employer pay VEBA for the three year period at 85% for single and family insurance coverage.

There is conclusive evidence that the City never raised the 80/20 percentage split in 2016 for retirees insurance in negotiations. Union President Story testified that the City never raised the 80/20 percentage split in 2016 for retirees until the City's letter to the BMS dated April 15, 2014. He

also went on to state that there was no discussion on this topic during bargaining, nor was it in the City's final proposal to MAPE in March 2014. Further, neither AFSCME nor the IAFF collective bargaining agreements contain the City's proposed retiree language.

External comparison is another recognized factor of significant worth when ascertaining the validity of both economic and non-economic impasse issues. However, due to overwhelming and long-standing past practice of adhering to internal settlements between AFSCME and MAPE, external settlements have little weight in this case. Further, the Employer attempts to compare the MAPE positions and the City to an incomplete list of external city comparisons. The list of comparable cities is inappropriate in two ways - 1) the list provided is incomplete, and 2) the cities listed do not employ equivalent supervisory positions.

The comparability group proposed by the City only encompasses four cities: Chisholm, Eveleth, Virginia and Grand Rapids. This list is incomplete because it leaves out cities previously recognized by an interest arbitrator in City of Hibbing and Hibbing Police Federation, BMS Case #11-PN-581, (Ogata, 2011). Arbitrator Ogata listed Chisholm, Eveleth, Virginia, Bemidji, Brainerd, Cloquet, and Grand Rapids as the appropriate comparable group. In this case, the City chose to

exclude from its list the cities of Bemidji, Cloquet and Brainerd. Additionally, with the exception of Grand Rapids, all of the cities listed by the City are substantially smaller than Hibbing.

There is also convincing evidence that the cities contained in the City's proposed comparability group do not employ the same supervisory positions as Hibbing, making them not a valid comparison. For example, Chisholm and Virginia only employ three supervisors in total compared to Hibbing's 11 supervisory positions. Similarly, Eveleth only employs four supervisors. There is simply no evidence in the record that the positions identified by the City as comparable positions are in fact comparable in terms of work load, responsibility and qualifications.

Even assuming arguendo that the City's proposed comparability group is a valid comparison, the evidence shows that Hibbing's supervisory staff pay levels are not out of line with those listed for Grand Rapids, Virginia and Chisholm - three of the four cities listed. The City's list of comparables simply do not justify a substandard pay increase, nor do they provide a legitimate rationale for breaking away from the historic internal comparable with AFSCME.

The Parties did not provide any evidence as to the cost-of-living index, which sometimes is a factor to be considered by an

interest arbitrator. Even if this CPI data was provided, it still would not supersede the historical relationship that exists between AFSCME and MAPE with respect to the outstanding impasse issues.

ISSUE ELEVEN: SEVERANCE/RETIREMENT - ELIGIBILITY AND AMOUNT? - ARTICLE 3, SECTION 3.3

POSITION OF THE PARTIES

The Union proposes to modify the current contract language in Article 3, Compensation, Section 3.3, Severance Agreement, to read as follows:

All employees hired after 1982 and eligible to draw retirement benefits from PERA, be paid severance payment which shall be paid into either the employees Post Retirement Health Care Account or be paid directly to the employee, in an amount as follows: After 15 years of service for the City, an amount equal to twenty five percent (25%) of the current value of his/her accrued sick leave at the time of retirement: after completing 20 years of service with the City, an amount equal to forty percent (40%) of the current value of his/her accumulated sick leave at the time of retirement: or after completing 25 years of service with the city, an amount equal to fifty (50%) of the current value of his/her accumulated sick leave time at the time of retirement. Employees hired after 1/1/82 will be allowed to cash out their vacation accrual balance to be paid at the time of retirement.

The Employer proposes to maintain the status quo to current contract language in Article 3, Compensation, Section 3.3, Severance Agreement.

AWARD

The City's position is sustained.

RATIONALE

While the Union's proposed language mirrors the contract language in Article VI, Health, Dental and Life Insurance, Section 5, Retirement/Severance, of the AFSCME's contract, there is no language in the AFSCME contract that allows employees hired after January 1, 1982 to cash out their vacation accrual balance to be paid at the time of retirement.

Further, this retirement vacation accrual benefit sought by the Union would be very costly to the City. Accordingly, this benefit should be negotiated by the Parties rather than through interest arbitration where trade-offs can be made unless future negotiations prove to be fruitless.

**ISSUE TWELVE: LAYOFF NOTICE - NUMBER OF DAYS NOTICE
REQUIRED? - ARTICLE 9, SECTION 9.4**

POSITION OF THE PARTIES

The City proposes to maintain the current contract language in Article 9, Seniority, Section 9.4, which reads as follows:

In the event of layoff, employees shall be laid off according to seniority in the inverse order of hiring. Employees shall be given a ten (10) working days notice of layoff.

The Union proposes to change the current contract language in Article 9, Seniority, Section 9.4 to read as follows:

In the event of layoff, employees shall be laid off according to seniority in the inverse order of hiring. Employees shall be given a thirty (30) working days notice of layoff.

AWARD

The City's position is sustained.

RATIONALE

The party seeking to change existing contract language bears the heavy burden of proving that the modification is necessary. In this case, the Union has failed to meet this heavy burden.

One of the accepted reasons for changing existing contract language is that there is a definite problem with the language and that its proposed change will rectify the existing problem and produce a necessary and reasonable result. While it is true that MAPE members must give a 30 day notice to the City if they choose to resign, there is no evidence that the 10 working days notice of layoff has caused any sufficient problems for any MAPE member. Until such problems arise, the current contract language should exist since it was negotiated in good faith and credit between the Parties in prior collective bargaining agreements.

In addition, the current MAPE contract language that requires the 10 working days notice of layoff is also contained in the AFSCME contract language. Thus, to maintain the current layoff notice contract language guarantees consistency among the City's bargaining units, especially AFSCME which is the lead bargaining unit.

**ISSUE THIRTEEN: UNIFORM ALLOWANCE - AMOUNT FOR POLICE
CHIEF AND FIRE CHIEF? - NEW**

POSITION OF THE PARTIES

The Union proposes that the Chief of Police and Fire Chief receive a uniform allowance of \$75 per month. The City opposes any uniform allowance.

AWARD

The City's position is sustained.

RATIONALE

It is not mandatory for the Chief of Police or the Fire Chief to wear uniforms, so it is unfair to compel the City to pay a uniform allowance. Thus, there is no compelling reason to grant a uniform allowance to these MAPE members who choose to voluntarily wear uniforms to work.

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

Richard John Miller

Dated September 15, 2014, at Maple Grove, Minnesota.