

IN THE MATTER OF ARBITRATION BETWEEN

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City of Crystal, Minnesota  
“Employer”

BMS Case No. 14 PN 0820

and

Decision and Award

Law Enforcement Labor Services  
Local No. 44 Patrol Officers  
“Union”

John W. Johnson  
Arbitrator

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Date of Hearing:

August 5, 2014

Post Hearing Briefs Submitted:

August 20, 2014

APPEARANCES

For the Union:

Adam Burnside, Business Agent

For the Employer:

Frank Madden, Attorney

Anne Norris, City Manager

STATEMENT OF JURISDICTION

The hearing was held in the above manner August 5, 2014 in the Crystal City Hall, Crystal, 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 August 20, 2014.

ISSUES

The parties negotiated to impasse on a collective bargaining agreement for calendar years 2014 and 2015. Three 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. The issues are:

1. Wages 2014 – General Adjustment for 2014 – Article 28
2. Wages 2015 – General Adjustment for 2015 – Article 28
3. Wages – Market Adjustment, If Any – Article 28

Union Position:

- Issue 1: 3.0% general wage increase for 2014
- Issue 2: 3.0% general wage increase for 2015
- Issue 3: 2.0% market adjustment increase on 01/01/2014

Employer Position:

- Issue 1: 2.0% general adjustment
- Issue 2: 2.0% general adjustment
- Issue 3: no market adjustment

Interest Arbitration Standards

Arbitrators rely on several factors in determining interest arbitration awards. These include the employer's ability to pay, internal comparisons, external comparisons, pay equity, and other economic considerations, for example, increases in the cost of living. The Union asserts that the Minnesota Legislature, in passing the Minnesota Public Employer Labor Relations Act, intended arbitration to be a replacement for a strike, not a replacement for negotiations, and that therefore an interest arbitration award should reflect, in the form of a settlement, the agreement which the parties would have reached to end a strike. The employer states that interest arbitration is an extension of the collective bargaining process, citing the Elkouris, who state that the fundamental objective of interest arbitration is to formulate awards from the evidence which best represent the agreement the parties would have ultimately reached, mindful of whatever influence a work stoppage might theoretically have provided, had the parties been able to continue negotiating to a successful conclusion. Elkouri and Elkouri, How Arbitration Works, 105, (5<sup>th</sup> ed. 1997). From either perspective, the interest arbitrator must consider what he or she believes the parties would have ultimately agreed on, based on the evidence presented.

Ability to Pay

The Union argues that the employer has the ability to pay, noting that the City had a fund balance at the end of 2013 of over 7.7 million, or 62% of operating expenses. State Auditor guidelines call for fund balances of 35-50% of operating expenses. The City's fund balance is also above the City's own guidelines. In addition, local government aides (LGA) are up by \$146,765, and property tax revenues are up by \$54,444. The cost of the Union's proposal is \$87,862 more, over the life of the proposed contract, than the cost of the Employer's proposal. Evidence of the City's financial health includes an increase of \$1,000,000 in the general fund budget from 2013 to 2014.

The City, on the other hand, cites indicators that the City's financial health is still recovering from the economic downturn of recent years. While local government aides have increased, the City is still dealing with the consequences of reduced LGA for the years 2008 through 2011. The City also has a relatively low tax capacity, lower average income, higher poverty rates, greater decline in residential property values, and a higher foreclosure rate, when compared to

other Minnesota Cities. The City has been proactive in cutting expenses to deal with its financial constraints. The employer also argues that fund balance should not be used for ongoing expenses like wages, and cites arbitrator Gallagher in support of that assertion. Law Enforcement Labor Services Inc, and City of New Hope, BMS Case No. 12-PN-0656 (Gallagher 2012) .

The Employer also disputes the Union's figure for the cost difference between the two proposals. The City states that when the associated costs of PERA, FICA, step movement, and fringe benefit costs are figured in, the difference between the two proposals is \$125, 449.

### Internal Comparisons

Three bargaining units represent City employees. In addition to the Patrol Officers unit (21 employees), there is a Local 49 Public works unit (20 employees) and a LELS Patrol Supervisors unit (6 employees). For 2014, the Local 49 public works unit settled for a 2% general wage increase. The Patrol Supervisors have not settled, although they have made an offer of a 2% general wage increase for each of years 2014 and 2015, plus a .5% market adjustment for 2015. Unrepresented employees (55 employees) received a 2% general wage increase for 2014. No wages for 2015 have as yet been determined. The City has budgeted 2.5% for general wage increases for 2015, subject to City Council approval.

The employer argues that these facts show an internal pattern for 2014 that should be given significant consideration in determining an award. In addition, the City points out that Patrol Officers receive longevity pay of up to 9%, depending on their length of service, and that neither the Public works Unit nor the unrepresented employees receive longevity pay.

The Union counters that one settled bargaining unit for 2014, and no wages determined for 2015, do not result in a pattern.

### External Comparisons

The parties provide comparison data for three different and overlapping comparison groups. The Union relies on comparison data for a group of employers identified as comparable by the Springstead consulting group, hired by the City to conduct a classification and compensation study. The employer takes from the Springstead study its conclusion that if maximum salaries are within 5% of the average for an appropriate comparison group they are comparable, and applies that conclusion to two other comparison groups, the "Wallin group", consisting of cities identified by arbitrator Wallin as comparable to Crystal in a 2012 interest arbitration award, Law Enforcement Labor Services, Inc. and City of Crystal, BMS Case No.12-PN-0693 (Wallin 2012), and to the former Stanton VI group of cities. The Union presents data to show that under the employer's proposal, the Union maximum salary for Patrol Officer would be 5.42% below the average for the Springstead study comparison group. Union Exhibit 28. The Employer presents data to show that under the Union proposal, the maximum 2014 salary for Patrol Officer would be 101% of the average for the Wallin comparison group, while under Employer's proposal, it would be 99%. Employer Exhibit 49. Employer data for the Stanton VI group show that under the employer's proposal the maximum 2014 salary for Patrol Officer would be 98% of the average maximum, and under the Union;s proposal 101%. Employer Exhibit 63. Both the

Wallin group comparisons and the Stanton VI group comparisons include longevity pay. The data for the Springstead comparison group do not.

### Pay Equity

Interest arbitrators in Minnesota are required to consider the effects of a public sector arbitration award on pay equity. Public sector jurisdictions are required to maintain an underpayment ratio (number of underpaid male dominated classes divided by the number of underpaid female dominated classes) of 80% or higher, and report to the state every three years. The City's report for 2013 shows an underpayment ratio of 105.49%. Union Exhibit 23. Patrol Officers are a balanced class, and therefore not included in the pay equity calculation.

### Cost of Living

The Union points out that the Current Consumer Price Index (CPI) has increased by 8.5% since 2011. Union Exhibit 25, and that the employer's proposal would result in an increase of 5% in wages during that same time period, and the Union's proposal 8%. The employer counters with the information that since 2001, this bargaining unit has received increases that exceed increases in the CPI by 32.2%. Employer Exhibit 36.

### Discussion

Given that the City is well within pay equity compliance standards, and its compliance will not be affected by changing the pay for a balanced class, pay equity need not be considered further. The employer does make reference in its argument for unspecified possible negative effects on pay equity, but is not clear about what those might be.

The City makes a good case for its need to be fiscally responsible, and this must be considered. However, it does not claim that it is unable to pay more than what its final position provides.

Considering that the pay increases for this bargaining unit have more than kept up with increases in the CPI over the longer term (2001 to 2013), catching up with the CPI is not necessary.

Relying primarily on internal comparisons is not conclusive in this case. For 2014, the internal comparisons consist of one out of the three bargaining units, and the unrepresented employees. While the increases given to unrepresented employees may suggest what the parties may have agreed to had they bargained to agreement, relying too heavily on that would give the employer some ability to unilaterally establish a "pattern," which is inconsistent with the idea of collective bargaining. Adding one settled contract to the data, makes the pattern argument somewhat stronger, but still far from compelling. And an offer that has not been accepted (the offer from the Patrol Supervisors' unit) is not evidence supporting a pattern.

For 2015, there is no internal data on settlements, so there is no pattern. What is available, is that the City has budgeted 2.5% for 2015 increases.

That leaves external comparisons to be considered. In looking at Union Exhibit 34, it is clear that the great majority of employees in the bargaining unit are receiving longevity pay. This raises a question about the Union's conclusion, shown in Union Exhibit 28, that the employer's proposal will result in a maximum 2014 salary for Patrol Officers that is more than 5% below the average maximum for the Springstead comparison group. Union Exhibit 28 shows a City of Crystal maximum that does not include longevity pay, and contains no information about longevity pay for the comparables listed. Given that, it's not clear what is being compared to what. While it can be argued that the Springstead group is an appropriate comparison group, I find the Springstead comparison to be inconclusive, given the lack of longevity data.

The Wallin comparison group data provided by the City does include longevity pay. Employer Exhibit 49. I therefore find this to be a more useful comparison. The City also provides ample data supporting the comparability of the Wallin group to the City of Crystal. Employer Exhibits 37 through 47. And as stated above, the City's proposal for 2014 results in a maximum, including longevity that is 99% of the average for the Wallin comparison group. 2014 data for the Stanton VI comparison group (also including longevity pay) are consistent with the data for the Wallin comparison group.

Less information is available for 2015. Calculating from the salary increase data in Employer Exhibit 48, I find an average percent increase of 2.62% for the 4 out of 8 Wallin comparison group cities that have settled for 2015. Employer Exhibit 62 shows an average percent increase of 2.2% for the 13 out of 30 Stanton VI cities that have settled for 2015. Calculating from the data in Employer Exhibit 50, I find an average maximum salary of \$6477.75, including longevity, for the 4 out of 8 Wallin comparison group cities that have settled for 2015. This compares to a maximum of \$6245 under the Employer's proposal, and \$6491 under the Union's proposal. Employer Exhibit 50.

### Conclusion

For 2014, the available internal comparisons and the financial constraints on the City provide some support for the employer's position. More importantly in this case, the external comparisons that include longevity pay show that the employer's position maintains comparability with other cities in the Wallin and Stanton VI comparison groups.

For 2015, given the lack of internal comparison data, I must rely on the incomplete external data. The Wallin group average salary for 2015, and the average percent increases for this group and for the Stanton VI group support a salary award greater than the employer's position, but less than the Union's position.

Award

Based on the above discussion and conclusions, I award the following:

2014: 2% general salary increase, effective January 1, 2014

2015: 2.5% general salary increase, effective January 1, 2015

No market adjustment

Date: September 19, 2014

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John W. Johnson, Arbitrator

