IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

CITY OF LAKEVILLE	)	**BMS CASE NO. 14-PN-1305**
“CITY”	)	**DECISION AND AWARD**
LAW ENFORCEMENT LABOR SERVICES LOCAL 128	)	**RICHARD R. ANDERSON ARBITRATOR**
"UNION”	)	**DECEMBER 9, 2014**

APPEARANCES

For the Union:

Dan J. Wells, Chief Executive Officer
Jeff Hanson, Steward

For the City:

Scott M. Lepak, Attorney
Karen K. Kurth, Attorney
Cindi Joosten, Human Resource Manager

JURISDICTION

Pursuant to the provisions of the Minnesota Public Employment Relations Act (PELRA),[1] Bureau of Mediation Services (BMS) Commissioner Josh Tilsen certified the following issues in dispute to interest arbitration in a letter dated August 1, 2014:

1. Duration - What should the Duration of this Agreement be? - Article 42
2. Wages - What changes, if any, should be made to the wage/salary structure for 2014? - Article 21
3. Wages - What changes, if any, should be made to the wage/salary structure for 2015? - Article 21

[1] Minn. Stat. §179A.16, Subd. 2 and Minn. R. 5510.3930

The undersigned Arbitrator, being duly appointed as an Arbitrator under the auspices of the BMS, was notified of my selection as the neutral arbitrator in this matter by the Law Enforcement Labor Services (LELS) Chief Executive Officer Dan J. Wells in a letter dated September 15, 2014. A hearing was held on November 13, 2014 in Lakeville, Minnesota. The parties were afforded a full and fair opportunity to present its case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced and received into the record. During the course of the hearing the parties indicated that Issue 1 (Contract Duration) had been resolved and stipulated that the two remaining Commissioner-certified issues were properly before the undersigned Arbitrator for final determination. The record was closed on November 28, 2014 after the Arbitrator received the parties' timely post-hearing briefs.

BACKGROUND

The City of Lakeville, hereinafter the City or Employer, is located approximately 23 miles south of downtown Minneapolis, Minnesota in Dakota County. Lakeville is one of the fastest-growing cities in the Minneapolis–Saint Paul metropolitan area with the estimated 2014 population of approximately 59,000. The City has approximately 190 employees. There are 103 unrepresented employees. Eighty seven (87) employees are represented in four bargaining units. There is one non-essential unit consisting of 39 Public Works and Parks Department (Public Works) employees represented by Teamsters Local 320 and three essential units consisting of 48 employees represented by various LELS locals.

LELS Local 128 represents a unit of 39 Police Officers and Investigators, herein after Officers, which is the subject of this interest arbitration. LELS Local 177 represents a unit of five (5) Police Sergeants while LELS Local 384 represents a unit of four (4) Lieutenants.[2]

This will be the first contract between the parties. Prior to this, this Officer unit was represented by Minnesota Public Employees Association with the last contract effective from January 1, 2012 through December 31, 2013.

OPINION AND AWARD

On the basis of the evaluation of all of the testimony, documents and arguments presented by

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[2] The Lieutenant position was created in 2013 when the Captain classification was eliminated. It appears three Sergeants assumed the Lieutenant classification and the existing Captain was reclassified as a Lieutenant.

the parties, the decision by this Arbitrator is as follows:

ISSUE 1—CONTRACT DURATION—42

Pursuant to the agreement and stipulation of the parties, the contract will be effective from January 1, 2014 through December 31, 2015.

ISSUES 2 AND 3—WAGE INCREASES FOR 2014 AND 2015—Article 21

The existing language:

Effective January 1, 2013, the following monthly rates shall apply:

Start	$24.88
After 12 months	$28.47
After 24 months	$30.80
After 36 months	$34.26

Union's 2014-2015 Wage Proposals:

The Union is requesting a three percent (3%) wage increase retroactive to January 1, 2014. and a three percent (3%) wage increase effective January 1, 2015.

Effective January 1, 2014

Start	$25.63
After 12 months	$29.32
After 24 months	$32.72
After 36 months	$35.39

Effective January 1, 2015

Start	$26.40
After 12 months	$30.20
After 24 months	$32.68
After 36 months	$36.35

City's 2014-2015 Wage Proposals:

The City is requesting a two percent (2%) wage increase retroactive to January 1, 2014 and a two percent (2%) wage increase effective January 1, 2015.

Effective January 1, 2014

Start	$25.38
After 12 months	$29.04
After 24 months	$31.42
After 36 months	$34.95

Effective January 1, 2015

Start	$25.89
After 12 months	$29.62

After 24 months	$32.05
After 36 months	$35.65

<u>Pay Equity</u>

The Union's position is that there is no pay equity issue. The Union argues the City is currently in compliance with the Minnesota Local Government Pay Equity Act (*Union Exhibit 9*). The latest report dated January 22, 2014 disclosed that the City has an underpayment ratio of 93.33%, well above the recommended 80% ratio. Based on the Union's wage proposals, the City would still be in compliance and has offered no argument that it would not be.

The City's position is that pay equity must be considered in any award that issues. The City argues that the male-dominated Officers are already above predicted pay and any additional wage increase will move the Officers further away from their existing preferred position. Any wage increase above what other employees receive strongly weighs against granting the Officers their requested pay increases.

<u>Ability to Pay</u>

The Union's position is that the City has adequate resources and is in sound financial health, and therefore, has the ability to pay Officers its wage proposals. According to the City's 2013 Comprehensive Annual Financial Report (*Union Exhibit 8*), the City's total cash and investments exceeded $84 million. The City's estimated unassigned general fund balance for 2014 is $9,096,974 reflecting an increase of $1,036,534 in 2012 and $468,268 in 2013. This projected unassigned fund balance is 41% of total general fund expenditure at the end of 2013 and well within the 35% to 50% parameters recommended by the State Auditor. The cost difference between the Union and the City wage proposals furnished by the City is only $129,028 for the two-year contract period.

The City's position is that the proper analysis is not the "ability to pay" but rather the statutory mandate in PELRA that "*the arbitrator ... shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.*" (Minn. Stat. 179A. 16, Subd. 7)

The City noted that there are two primary factors that need to be considered in assessing the statutory rights and obligations to efficiently manage and conduct its operations: (1) Growth in population provides increased revenue hut also creates the demand for increased level of services. Accordingly, funds associated with growth should not be used for existing obligations. (2) The recent recession created a situation in which needed spending was deferred, resulting in a need for additional spending as the recession eases.

Looking at the $466,268 increase to the fund balance in 2013, the Union's proposal will mean that almost 30% of the fund balance increase from 2013 would go to this one minority group of employees in a male-dominated classification that is already above predicted pay. Such a result is not rational particularly given the financial challenges facing the City.

Expanded fund balances are necessary to pay for projected staffing increases and expanded service levels. Increased staffing and service levels means that increased revenues associated with growth are not available to fund existing salary obligations at a greater level.

Additional revenues will be needed to fund areas that were deferred in the recent recession, particularly infrastructure needs related to street repair and maintenance. In addition to the looming financial burden associated with its streets, the City will be required to address facility needs. During the recession and the years that followed, the City's governing body has been judicious in approving a conservative budget and tax levy. As a result major maintenance of facilities, parks and other infrastructure has been financed with one-time revenues or debt or in certain situations deferred to future years.

The City also has financial needs related to its parks and trails. The Trail Improvement Fund balance (which was initially financed with a one-time transfer from the General Fund) was and will be reduced from $759,000 beginning in 2014 to $154,000 at the end of 2018. The portion of the tax levy for trail maintenance and reconstruction will need to be increased as this fund dwindles. In addition, parks major maintenance projects were deferred during the recent recession. The 2014-2015 Capital Improvement Plan identifies approximately $1,000,000 of park improvements and major maintenance projects for which there is no approved revenue source.

Another major area of financial concern relates to the Employer's need to replace and acquire equipment needed to provide City services. In order to address the peaks and valleys associated with the City's equipment replacement schedule, the increase in City funding for this area represents 1.5% of the City's total tax levy for 2015.

A short band measure of health often utilized in interest arbitrations is a review of whether a City's fund balance exceeds the State Auditor's 50% recommended threshold. Lakeville, at 41%, is not at this threshold.[3] It is also a recognized arbitral principal that reserves in excess of the State Auditor's recommended range are not an appropriate basis for awarding a general increase.[4] This arbitral principal of not raiding a fixed account to pay for ongoing expenses also applies to investments and income from investments. Any amounts beyond the budgeted two percent (2%) in both 2014 and 2015 for this bargaining unit would not be consistent with the City's statutory rights and obligations to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these operations. These factors overwhelmingly support the City's final wage position.

Internal Equity

The Union's position is that the City does not have an internal equity argument to deny the Officers its proposed wage increases in 2014 and 2015. The Union argues that the City has negotiated wage settlements with all the other represented units that deviated from an internal wage pattern in both contract years. The Sergeant unit received 3% in 2014 and will receive another 3% in 2015. The newly created Lieutenant unit received an 11% increase for their two-year contract. The Public Works unit received 1.75% plus a $400 lump sum payment in each year of its two-year contract. Non-union employees were the only group that received a 2% wage increase in both contract years and that amount was unilaterally determined by the City. Based on the foregoing, it is clear that the City has failed to establish an internal wage increase pattern for its employees

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[3] Fifty percent represents the top of the recommended 35% to 50%.

[4] *Washington County and MNPEA, BMS Case No. 12-PN-0813 (Richard John Miller, 2013) at page 9.*

The Union argues further that there has historically been a 25% wage separation between the Officer and Sergeant units dating back to at least 2005. [5] (Union Exhibit 10) Denying the Union's wage proposal will further separate the two groups.

The City's position is that the internal settlement pattern supports its wage proposal. The City argues that its final offer of 2% for each year of the contract is the same as budgeted and provided to non-union employees and to the newly formed Lieutenant unit. Contrary to the Union's assertions that the Lieutenant unit received an 11% wage increase, the record reflects that this group received 2% for both years of the two-year contract. [6]

While the Sergeant and Public Works units received a general wage increase that differed from non-union employees and the Lieutenant unit, the deviations were based upon the 2% internal pattern before external market conditions were considered. A review of the external market comparable group resulted in the Sergeant unit receiving an additional 1% wage for each year of the two-year contract. In the case of the Public Works unit, their lower wage adjustment of 1.75% in each year of the two-year contract initially used the 2% internal pattern which was then reduced based upon a review of the wage rates of its external comparable group. The additional $400 lump sum payments were negotiated in order to make the external market adjustment more palatable to this group of employees.

With respect to the Union's claim of a historically established 25% wage separation between the Officers and Sergeants, there was no evidence presented that the parties intentionally negotiated or consciously maintained this spread. Rather, this consistent differential appears to be the result of uniform wage increases for both groups during this period. It would be unjust to give the Officers a wage adjustment based upon a wage adjustment justified for the Sergeant unit where none is warranted when comparing the Officers to other officers in the comparable group.

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[5] Exhibit 10 discloses a separation rate of 28% in contract years 2005 and 2006, 23% in contract year 2007, 26% in contract year 2008 and 25% in contract years 2009-2013. In reviewing this Exhibit, I recalculated the differential using the salary figures in Exhibit 10 and arrived at different percentages of separation that will be discussed later in this Decision.

[6] It appears that the City is arguing that once a base rate for this new classification was established during negotiations for an additional 2% was agreed to for each year of the two-year contract. However, no evidence was proffered to support this scenario.

Finally, it would be inappropriate to give the male-dominated Officer unit that is already above predicted pay any wage increase beyond that which other employees will be receiving for the two-year contract period.

External Equity

It is the Union's position that external factors also support the Union's position on wage increases. The Union argues that the historical external comparable market consists of the following 11 cities—Apple Valley, Blaine, Burnsville, Eagan, Eden Prairie, Edina, Maple Grove, Minnetonka, Plymouth, St. Louis Park and Woodbury. This group of cities in the external market is no longer comparable because five cities (Apple Valley, Eden Prairie, Minnetonka, St. Louis Park and Plymouth) do not provide longevity in 2014 and 2015.[7] Blaine also is no longer comparable because it provides longevity and an educational incentive plan that is being phased out. In view of this only the top wage rates should be used for comparison.

The Union contends that even with its requested 3% wage increase in each year of the two-year contract, the Officer unit's top wage rate would be 1.8% below the average of the other 11 comparable cities; however, it would maintain its current 2013 6th place ranking among the comparable cities in both 2014 and 2015[8].

It is the City's position that the wage rate in the applicable external comparable market consisting of Apple Valley, Blaine, Burnsville, Eagan, Eden Prairie, Edina, Maple Grove, Minnetonka, Plymouth, St. Louis Park and Woodbury does not warrant a market adjustment in excess of the 2% increase that the City has proposed.[9]

The City argues that the Officers are at or slightly above the external market average. Using the benchmark top salary plus longevity in 2013 and in terms of relative ranking, the City was 5th of the 12 comparable cities and only $6/month behind St. Louis Park. Awarding the Employer's final position of a two percent (2%) increase each year will keep Officers with a combined top wage and longevity compensation package well above the external

[7] It should be noted that only Apple Valley provided longevity pay in this group for 2013.
[8] In this comparison the Union did not consider longevity pay.
[9] This group of cities was also used as the comparable external market for the Public Works and Sergeant external market reviews.

market average. The market average of $6,525.36 in 2014 is less than the City's proposed 2% increase resulting in a monthly top wage plus longevity of $6,632.60. Similarly in 2015, the market average of $6,723.21 is less than the City’s proposed 2% increase resulting in a monthly top wage plus longevity of $6,765.25. Thus, external market considerations strongly support the Employer's final position.

Cost of Living and Other Economic Factors

The Union did not present any evidence or arguments regarding this factor except for material in its “Book” that disclosed that the Consumer Price Index (CPI) for all cities increased by 1.7% in the 12-month period ending in August 2014. The City agrees with this figure and argues that the 2% it is proposing in each contract year is consistent with the CPI data while the Union’s 3% is not.

The City also argues that it has not experienced a recruitment or retention problem. Four Officers left for employment in other law enforcement jurisdictions. Two Officers went to the City of Bloomington while one Officer went to the City of Edina where his father had been previously employed as a police officer. The fourth Officer joined the Minnesota Bureau of Criminal Apprehension (BCA). The application process for these positions produced 210 viable candidates. Further, in 2014 the City hired a total of nine Officers, five of whom had previous law enforcement experience with other municipal agencies.

DISCUSSION AND AWARD

Arbitrators in Minnesota generally consider the following factors in interest arbitration awards—employer’s ability to pay, pay equity, internal equity, external equity, the cost of living and purchasing power, and other economic factors such as difficulty in hiring, turnover and retention rates. I intend to continue to follow these traditional factors in making my award.

My role as an Arbitrator is to ensure that any award is consistent with what the parties would arrive at if this bargaining unit had the right to strike or the City had the right to lock out the Officers if no agreement was reached at the bargaining table. I also need to ensure that this award does not significantly alter the Officers’ internal or external relative standing unless there are compelling reasons to do so.

Furthermore, I must ensure under PELRA that any award I fashion does not conflict with Pay Equity Act compliance as measured by DOER. Based upon the evidence presented pay equity is not a factor in my award and would have no effect even if I were to award the Union its requested wage increases. The City is currently in compliance with the Pay Equity Act with an underpayment ratio of 93.3%, well above the recommended 80% threshold. The 31 patrol officers and 10 special assignment officers were respectively $16.43 and $81.75 above predicted pay in the City's January 2014 pay equity report to the State. Meanwhile the seven patrol sergeants and one special assignment sergeant who received 3% wage increases in each year of their two-year contract were respectively $205.32 and $311.88 above predicted pay in this report. In view of this and contrary to the City's argument, my award will have less impact on the City's predicted pay compliance than the 3% wage increases negotiated with the male-dominated Sergeant unit.

The ability to pay is also not a factor in my award since the City is financially well positioned to absorb its cost. The State's economy is improving based upon the recent projected $1,000,000 budget surplus for fiscal 2016-2017 and also appears to be improving for the City based upon a $468,268 improvement in its unassigned general fund for 2014. The City also continues to maintain a healthy unreserved fund balance in excess of the 35% threshold balance recommended by the State Auditor. Consequently, the City should be able to finance my award without resorting to levying additional property taxes on its property owners or cutting any vital City services.

The cost of living is also a non-factor in any award that I fashion since both wage proposals are greater than the current inflationary index. Moreover, it appears with the recent plunge of oil prices this inflationary index will be even more of a non-factor. Turnover, recruitment and retention also appear to be a neutral factor in determining an appropriate wage increase. If there is any impact, it would support the City's wage proposals since it appears that wage rates are not a source of employment decisions or otherwise detrimental to the City's hiring process.

Most arbitrators, including the undersigned, rely heavily on internal considerations when fashioning wage awards. The stronger the pattern based on current contract proceedings, the greater the reliance on internal equity. The evidence presented discloses that there has not been a consistent wage pattern negotiated by the parties in the other bargaining units with only the four person Lieutenant unit receiving 2% in 2014 and in 2015.[10] The 104 non-union employees also received a City imposed 2% in 2014. The City has indicated that the wage increase will also be 2% in 2015; however, to my knowledge this has not yet been formally implemented.

The Union presented evidence in Union Exhibit 10 in order to support its wage proposals that there has been a consistent separation or differential (25%) between the Officers and Sergeants pay structure since 2005. In reviewing this Exhibit, I found a discrepancy in its figures and recalculated the differential using the same Union salary figures. The recalculation disclosed the following differential figures—(2005 - 24.80%), (2006 - 24.78%), (2007 - 20.91%), (2008 - 23.31%), (2009 - 22.32%), (2010 - 22.31%), (2011 - 22.31%)[11], (2012 - 22.32%) and (2013 - 22.30%).[12] Thus, it appears that at least since 2009 the wage differential has remained constant hovering around 22.31%. The Union's proposed 3% in 2014 will reduce this differential to 22.02% while the City's 2% wage proposal will raise the differential to 23.26%. The parties' 2015 wage proposals disclose that differential based on the Union's 3% wage proposal would be 22.29% while the differential under the City's 2% wage proposal would be 24.29%.

The City argues that there is no evidence that the wage differential has ever been negotiated or consciously maintained by the parties, adding that it is obvious that granting the Sergeant unit a market adjustment would impact on the differential. Nevertheless, it appears that historically there is merit to the Union's wage differential argument; however, it should be noted that the wage differentials under the City's 2014 and 2015 proposals are less than what they were in 2005 and 2006.

It is clear that there is no conclusive internal equity basis for awarding wage increases: rather, there are reasons to support each party's wage proposals. Therefore, it is appropriate to warrant an examination of external market factors. Using salary figures supplied by the

[10] The City argued that the Lieutenants also received 2% in 2014; however, there is no evidence that I am aware of to support this.
[11] There were no pay increases for either group.
[12] It appears that the wage figures in Union Exhibit 10 did not include longevity pay.

City in the attachment to its brief, the Officers ranked 6th in the 11 comparative cities based on monthly salary and 4th if longevity is included.[13] The City proposed 2% wage increase in 2014 maintains the respective 6th and 4th place ranking for 2014 while the Union proposed 3% wage increase in 2014 results in 6th and 3rd place rankings. The City proposed 2% wage increase in both 2014 and 2015 results in a 7th place ranking in each category for 2015. The City proposed 2% wage increase in 2014 and the Union proposed 3% wage increase in 2015 results in 6th and 3rd place rankings for 2015. The Union proposed 3% wage increase in both years results in a 6th and a virtual 1st place tie in the rankings for 2015.

Awarding the City's 2% wage proposal or the Union's 3% wage proposals for both contract years would upset both the internal and external relationship established in past contract years. Based upon all the evidence presented in this matter, it is appropriate to award the City's 2% wage proposal for 2014 and the Union's 3% wage proposal for 2015. This award results in the wage differential between the Officers and Sergeants in both 2014 and 2015 of approximately 23.25%, which is historically consistent with the salary differential between the Officers and the Sergeants over the past 10 years. This award is also consistent with the Officer's current relative ranking in the comparable cities.

AWARDS

Issue 1 Contract Duration. The parties agree that the contract will be effective from January 1, 2014 through December 31, 2015

Issue 2 Wage increase for 2014. The City's proposal is awarded. There will be a 2% wage increase in 2014, effective January 1, 2014.

Issue 3 Wage increase for 2015. The Union's proposal is awarded. There will be a 3% wage increase in 2015, effective January 1, 2015.

Dated: December 9, 2014

Richard R. Anderson, Arbitrator

[13] Apple Valley is being excluded because it dropped its longevity pay in 2014 and 2015. It was replaced with a wellness program for which the parties did not cost.