

Belle Plaine, City of

IN THE MATTER OF ARBITRATION BETWEEN

TIME REQUIRED TO RENDER AWARD: 35 DAYS

| | | |
|--|---|------------------------|
| Law Enforcement Labor Services, Inc. - |) | OPINION AND AWARD |
| Local No. 101 |) | |
| |) | Interest Arbitration: |
| |) | (Police Patrol Officer |
| -and- |) | & Sergeant Unit) |
| |) | |
| |) | Arbitrator: |
| |) | John W. Boyer, Jr. |
| |) | |
| The City of Belle Plaine |) | BMS 06-PN-479 |

APPEARANCES

For Law Enforcement Labor Services, Inc. - Local No. 101
Kenneth Pilcher, Business Agent
Bryan Pasek, Steward

For the City of Belle Plaine
David Murphy, City Administrator
Dawn Meyer, Finance Director

Date of Hearing

June 8, 2006

Close of Hearing

July 7, 2006

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STATEMENT OF JURISDICTION

Pursuant to the provisions of the State of Minnesota Public Employment Labor Relations Act (PELRA) as amended, a Hearing was held in the matter in the City of Belle Plaine, Minnesota

At the Hearing the Parties were afforded opportunity to present testimony under Oath, evidence, and arguments. Further, pursuant to an agreement between the Parties, the Employer was permitted to submit additional economic data relative to the total compensation costs of unit personnel to the Arbitrator by

June 16, 2006, and such was received in a timely manner. The Parties requested opportunity to submit post-Hearing briefs, such were duly submitted, and the Hearing was declared closed.

BACKGROUND AND STATEMENT OF THE ISSUES

The Employer is located southwest of Minneapolis on Highway 169, with a population of approximately 5,300, in the center of the fastest growing county in the state. It has two (2) bargaining units, the IUOE with 5-6 public works employees, and the instant police unit with 6 patrol officers and sergeants as part of an 8 person department.

The Employer bargained comparable 4.0% wage increases with both Unions for 2004 and 2005 as part of 3 year Agreements. Recently, the Employer bargained a 3 year Agreement with the IUOE that involved 3% annual rates of increase in wages, and granted a 3% increase to all non-union employees for 2006.

The Parties initiated current negotiations in January 2006, but after only two (2) sessions sought mediation that was unsuccessful. Accordingly, the Commissioner of the BMS certified the Issues below at Impasse:

- 1) Duration - Length of Agreement
- 2) Holiday Premium Pay
- 3) Uniform Allowance
- 4) Wages - Amount of Increase 2006
- 5) Wages - Amount of Increase 2007 - If Awarded
- 6) Wages - Amount of Increase 2008 - If Awarded

The Record indicates the Parties dispute the applicable external comparable cities within the Stanton Group 7 structure. The Union contends the more urban cities such as Mound, Spring Lake Park and Centennial Lakes that are within the "Twin Cities metropolitan area" are most applicable. However, the Employer contends the less urban cities of New Prague, Jordan, St. Francis, Rogers and Dayton are the most comparable.

Finally, the Parties offered disparate contentions relative to the necessity for the Arbitrator to craft an Award that would have avoided a strike, given Interest Arbitration is established by Statute as an alternative to a work stoppage for "essential employees". However, the Arbitrator is not singularly persuaded by the Union's contention given the Issues at impasse and the limited differences in financial affects.

Accordingly, the Arbitrator is compelled to assess the final positions of the Parties on the basis of their relative positions on each Issue and the total impact of the Award. Further, the Arbitrator is compelled to find such decision shall be predicated upon a question of whether a reasonable Party would accept the explicit and/or implicit economic, social and political "costs" of a strike over the current differences in positions on the Issues. The compelling conclusion is the Arbitrator is totally convinced such would not be acceptable to either Party, and the resulting criterion is for the Arbitrator to "fashion" an Award that would arguably reflect the "settlement" that would have resulted had the Parties continued to bargain to an Agreement.

Therefore, given the conclusions above, the Award is predicated upon the criteria established by Statute and Arbitral tradition in a "conventional" Arbitration format.

ISSUE 1 - DURATION OF AGREEMENT

UNION POSITION

Requested a one (1) year Agreement for 2006.

EMPLOYER POSITION

Requested a three (3) year Agreement for 2006, 2007 and 2008.

DISCUSSION

The Union proposes a one (1) year Agreement for 2006 to allegedly facilitate additional bargaining intended to develop a more positive employer-union relationship, and contends a "forced settlement" such as the instant Award may be contrary to the public policy of encouraging bargaining on all such matters. Similarly, it contends the external comparable data is less than sufficient given only one-half (1/2) of the cities have settled for 2007 and only three (3) cities for 2008. Finally, the Union argues the increasingly uncertain economic conditions make longer-term wage projections very challenging.

The Employer request is premised upon the Parties alleged practice of multi-year Agreements and a perception of a non-adversarial relationship. Further, such a three (3) year Agreement is consistent with its objective of synchronizing the Agreements with both bargaining units, and most of the comparable cities have such with some extended to 2008.

Accordingly, the Arbitrator is compelled to note the Issue is totally related to the Wage Issue addressed below, given bargained wage decisions are typically the crucial determinant of duration of the Agreement. In the instant matter, the Union's proposal for annual 6% increases in wages as addressed below must be characterized as less than realistic, and is not sufficiently premised upon the totality of the external and internal comparables. Similarly, while the Arbitrator can accept the Union premise of the desirability of the Parties bargaining the Issues and developing a more positive relationship, the Statute interprets Interest Arbitration as a valid extension of that process after unsuccessful bargaining and mediation, and such is incontrovertibly consistent with public policy.

Similarly, the Parties have a well established practice of bargaining multi-year Agreements, including the most recent 2003-2005 Agreement, and the singular internal comparable is the three (3) year agreement with the IUOE unit.

Therefore, the granting of a multi-year Agreement shall permit the Parties to have a "settled" set of wages, and provide sufficient opportunity to address the efficacy of their anticipated/disputed "possible" scenarios of growth, etc.

Further, the Arbitrator is cognizant the duration is different from that of the IUOE, but the singular compelling similarity between the units is a common Employer. Clearly unit personnel do not share the same or even substantially similar duties, hours, shift schedules, risks on the job, licensure requirements, public scrutiny, exposure to injury, continuing education and training requirements, unpredictability of work environment and/or equipment maintenance issues, etc., and such incontrovertibly justifies the differentiation in duration of the Agreements, and such is also reflected in the Award for Holiday Premium Pay and Wages below.

Simply stated, such differences are construed to be more critical than the Employer's understandable desire to synchronize duration of the Agreements, and while such is shorter-term than sought by the Employer and longer than requested by the Union, it is clearly buttressed by the totality of the Record.

AWARD

The Agreement shall be for two (2) years, effective January 2006 and 2007.

ISSUE 2 - HOLIDAY PREMIUM PAYUNION POSITION

Requested the Agreement be modified to provide Holiday Premium Pay at the rate of time and one-half (1½) for any of the nine (9) current holidays worked.

EMPLOYER POSITION

Requested no change in the current Agreement that does not provide for Holiday Premium Pay for any holiday worked.

DISCUSSION

The Union advanced the typical contentions of every law enforcement unit relative to the Issue, with the primary being the employees are required to work holidays as part of their regular shift schedules, and are denied the traditional opportunity to participate in "holiday related" family matters without any additional compensation for the inconvenience. Similarly, it contends the IUOE bargaining unit personnel receive such pay when required to work on a scheduled holiday.

The Employer position is to maintain the status quo, contending unit employees have advance notice of such holidays and can readily reschedule personal events, and the payment requested constitutes a "double payment" given they are already being paid for the holiday work that is a scheduled work day.

The Arbitrator is totally cognizant of the readily understood "practice" in law enforcement unit Agreements to provide personnel with such premium pay for at least some percentage of its scheduled holidays. Indeed, the Union cites numerous Arbitral statements of the nearly "universal" acceptance of such an economic benefit construed to compensate for the loss of such "off-duty" personal or family-related time. Accordingly, such conclusion is also buttressed by the

applicable Stanton Group external comparables that clearly indicate the benefit ought to be implemented.

Further, given the very limited bargaining between the Parties and despite the directive received by the Employer team, the Arbitrator is compelled to conclude such would have been included in a bargained Agreement and construed as part of the "total economic package" as addressed below for the Wage Issue and equally significant in the Duration Issue above to achieve a multi-year Agreement. Finally, given such conclusion, the Arbitrator is less than compelled by the "reality" and/or efficacy of the Employer contentions in the matter.

AWARD

The Agreement shall be modified to provide for Holiday Premium Pay at the rate of time and one-half (1½) for any of the nine (9) scheduled holidays in the Agreement retroactive to January 1, 2006.

ISSUE 3 - UNIFORM ALLOWANCE

UNION REQUEST

Requested the current annual Uniform Allowance of \$600 per employee be increased to \$675 effective 2006.

EMPLOYER REQUEST

Requested there be no change in the current Uniform Allowance of \$600 per year per employee.

DISCUSSION

The Union proposal is premised upon a contention the rate has remained unchanged since 2003, a perceived necessity for ensuring the professional appearance of personnel and the proper

maintenance of equipment, and such costs have allegedly increased 25%-40% since that date with an anticipated increase of 3%-10% for 2006. The Union also contends the current rate places the unit approximately 50% below the mean for its comparable cities, and the Agreement gives the Employer the ability to control such costs by requiring the approval of any such purchase(s).

The Employer request is premised upon its alleged "unique" practice of providing the total package of personal uniform and equipment to "new hires" and the current rate is equal to ten (10) of the (15) comparable cities for 2005, and the Union presented no compelling rationale for increasing the rate by 12.5% for the item.

Accordingly, the Arbitrator is compelled to conclude an increase is appropriate to address the "reality" of the matter. The Union's requested amount constitutes an additional expenditure and is reasonable given only its set of alleged comparables, and is clearly geared to provide some "catch up", and the Employer has the bargained right to "control" such expenditures for the uniform items listed in the Agreement. Further, both Parties ought to share "pride" of professional appearance given the uniform is the patrol officer's identity to the public and visual authority for service/action.

The Employer's contention is essentially "show me where we are deficient", and such can only be demonstrated by comparables upon which the Parties are in total disagreement. Further, the Employer correctly contends the various percentage price increases cited by the Union do not distinguish between the uniform and accessory items as detailed in the Agreement and constitutes a potentially significant increase in the benefit cost.

AWARD

The Uniform Allowance shall be increased from \$600 per officer per year to \$620 in 2006 and \$635 in 2007.

ISSUE 4 - Wages 2006
ISSUE 5 - Wages 2007, If Awarded
ISSUE 6 - Wages 2008, If Awarded

UNION POSITION

Requested an annual wage increase of 6% for 2006, and 2007 and 2008, if awarded.

EMPLOYER POSITION

Requested an annual wage increase of 3% for 2006, 2007 and 2008.

DISCUSSION

Arbitrators in public-sector Interest Arbitration are mandated to consider several criteria established by the applicable Statute in addition to other criteria traditionally applied in such matters, and such are reflected in the Award. The primary factors considered relative to the Issue are the following:

1) The Union's proposed 6% annual increases for 2006-2008 is premised upon the traditional criteria of the Employer's ability to pay, the allegedly minimal dollar differences between the Parties positions, and the Employer is and will continue to be in compliance with the LGPEA for the term of the Agreement. The Union also argues an absence of any applicable internal comparables and a similar absence of a clear history of equalized settlements between the two (2) bargaining units.

The primary support for the Union position is the external comparables that allegedly place the unit near or at the bottom of its Stanton Group comparables for wages, and it contends the mean increase for such is 3.81% for 2006 and 3.42% for 2007. Further, the Union contends the applicable CPI data all exceed the Employer's offer. Finally, the Union contends the unit has an employee retention problem with the alleged loss of personnel to the better paying rates in the urban region.

The Employer argues the offer is identical to that accepted by the other bargaining unit for the three (3) year period, is consistent with its objective of maintaining Pay Equity between the units, and a larger increase would create "hard feelings" between employee groups. Similarly, the Employer contends it is a less populated, less urban community than the comparables within the Stanton Group advanced by the Union, the applicable CPI data for 2006 is only approximately 2.8%, and such purchasing power indices affect all employees equally.

Accordingly, the Arbitrator is compelled by the efficacy of several contentions of the Parties including: A) the Record clearly indicates that while the Employer is included in Stanton Group 7 it is undeniably less urban than many of the other component cities in the Group, B) the total dollar differences between the final positions is relatively small - approximately \$7,700 for 2006, \$8,500 for 2007 and \$9,500 for 2008, C) there is no doubt the Employer has the ability to pay the wage increases requested and/or Awarded, D) the Record is totally void of any other increases such as step or longevity, etc. and/or other modifications that may have "purchased" the IUOE Agreement for the 2006-2008 period, and E) the various CPI indices are all consistent with that Parties positions and are construed to be less than dispositive with the exception of suggesting the well-documented concept of a "Midwest" inflation

rate and the long-term uncertainty of interest rates, gasoline prices, etc. that are equally applicable to all citizens and/or unit employees.

2) Therefore, the Arbitrator is compelled to premise the Award upon the "totality" of compensation received by unit employees, including the Holiday Premium Pay and Uniform Allowance increases herein, in addition to the "roll up" effect of the Awarded wage increase on vacation, sick leave, step increases, etc., all of which increase because they are pegged to the base wage rate and the increase Awarded.

Similarly, given the "uncertainly" of current and projected economic data, the current data in the Duration as Awarded and the Stanton Group data is premised only upon population, the Arbitrator is compelled to "fashion" an Award substantially similar to that which he believes the Parties could have bargained as cited above, and such is premised upon the following:

A) The Employer clearly has the ability to pay the increase Awarded, and such shall not force the Employer out of compliance with the LGPEA Statutes and Pay Equity criteria. Similarly, the Employer is "fiscally sound" and financially well managed with significant increases in its Undesignated and Unreserved Fund balances for 2002-2004, General Fund for 2002-2004 and has a positive revenue-expenditure position and is readily capable of addressing some non-specified non-gender related pay equity and debt repayment priorities.

Accordingly, despite its convincing contention of the need to prepare for anticipated growth, etc. the Employer is capable of paying the increases.

B) The Arbitrator is equally cognizant of the primacy of external variables, and such is especially applicable herein where the work/duties of the two (2) bargaining units is totally

dissimilar as addressed in detail above for the Duration Issue. Simply stated, such differences are inherently so significant as to negate the traditional internal comparable criterion of the Statute.

C) Similarly, the external comparables indicate the unit is especially "low paid" at the "top" of the wage ranges and the Union cites the percentage deficiencies above. However, such is clearly premised upon its "set" of alleged comparables, and the relatively small size of the unit makes any such aggregate averages or percentages less than clear or totally applicable. Further, the record indicates a "turnover" rate that is arguably a "problem", but could also simply demonstrate the natural "migration" of such skilled law enforcement personnel to similar higher paying jobs in the more urban Minneapolis area. However, the Record is void of any significant differences in the duties relative to the numerous "facets" of the more urban positions that could/would justify the necessity for such allegedly "higher wages".

D) The Arbitrator is also compelled to acknowledge the "difficulty" of projecting such costs and/or trends etc. into 2008 and as with the Duration Issue the Award shall permit the Parties to better prepare for "meaningful negotiations" for a successor Agreement with a more complete "picture" of the efficacy of their individually and collectively perceived "changes" that will occur in their allegedly rapidly evolving community.

E) Finally, given the Record indicates the Parties had very limited direct bargaining, and the accepted principle of such the Employer would have had to "buy" its desired longer-term Agreement, there is virtually no evidence of the extent to which it would, given its alleged directive to synchronize the

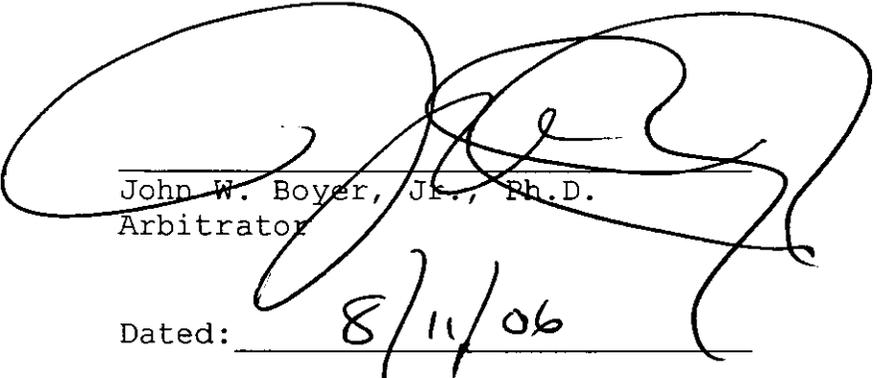
rate of wage increases for both bargaining units and non-union personnel.

Therefore, on the basis of the totality of the Record including the other Issues Awarded, the Arbitrator is compelled to find the wage rate increases below are clearly warranted.

AWARD

Wage rates shall be increased 3.25% for 2006 and 3.3% for 2007. Further, all 2006 wage increases shall be retroactive to January 1, 2006.

The Arbitrator assumes and appreciates the Parties intent to cooperate in implementation of the Award, to draft appropriate contractual provisions for their Agreement, and to administer any retroactive amounts due employees. However, the Arbitrator shall retain jurisdiction to resolve any matter(s) associated with administration and/or implementation of the Award.



John W. Boyer, Jr., Ph.D.
Arbitrator

Dated: _____

8/11/06