

IN RE ARBITRATION BETWEEN:

CITY OF FARIBAULT

and

IAFF, LOCAL 665, FARIBAULT, MINNESOTA

DECISION AND AWARD OF ARBITRATOR

BMS CASE # 07-PN-0721

JEFFREY W. JACOBS

ARBITRATOR

December 26, 2007

IN RE ARBITRATION BETWEEN:

City of Faribault,

and

DECISION AND AWARD OF ARBITRATOR
BMS CASE # 07-PN-0721

IAFF, Local 665 Faribault, Minnesota

APPEARANCES:

FOR THE UNION:

Jon Niebuhr, IAFF, Local 665

FOR THE EMPLOYER:

Pam Galanter, Frank Madden and Associates

PRELIMINARY STATEMENT

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. This is the parties' first labor agreement. The Bureau of Mediation Services certified 38 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated July 11, 2007.

A hearing in the above matter was held on December 7, 2007 at the City of Faribault Offices. The parties presented oral and documentary evidence at that time. Post-hearing Briefs were received by the arbitrator on December 21, 2007. The Union did submit an additional set of objections to the City's Brief.

ISSUES PRESENTED

The issues certified at impasse and in dispute at the time of the hearing are as follows:

1. Wages – Top Pay Rate for Captains and Firefighters for 2007 – Art. 28
2. Wages - Top Pay Rate for Captains and Firefighters for 2008 – Art. 28
3. Health Insurance – Employer Contribution in 2007 – Article 18
4. Health Insurance – Employer Contribution in 2008 – Article 18

The matter has been submitted to interest arbitration on a final offer – total package basis.

WAGE INCREASES FOR 2007 AND 2008 – ISSUES 1 & 2

UNION'S POSITION

On the wage issues the Union's position was for a 3.25% increase in wages for both firefighters and captains in 2007 and a 3.0% increase for both positions in 2008. This would result in a wage structure as follows:

POSITION	1-1-07	1-1-08
Firefighter	\$17.79/hr or \$4,317/month	\$18.32/hr or \$4,446/month
Captain	\$19.06/hr or \$4,625/month	\$19.06/hr or \$4,625/month

In support of this the Union made the following contentions:

1. For 2007 the parties' positions with regard to the 3.25% increase are the same. For 2008 the Union asserted that it is actually making a proposal that is ¼% *less* than the City's proposal as a way of offsetting the additional cost of the Union's health insurance proposal.

2. The Union asserted too that there are at this point no other settlements within the City of Faribault. None of the other labor organizations within the City have settled for either 2007 or 2008 at this point. There are therefore no internal comparables. The Union pointed to several external comparables that have been traditionally used and Mankato since it is within the southern district of the Minnesota Professional Firefighters' Association. The Union did acknowledge that Mankato should not be truly used as a comparable since Mankato has not been so used in the past.

3. The Union pointed to the Resolution 2007-084 that confirms that external or compensation paid to similar positions outside of the city is a major factor to be considered in determining the appropriate wages.

4. The Union pointed to the cities of Albert Lea, Austin, Owatonna, Red Wing and Winona. The 3.25% is at or near the top of the wage settlements for these cities. The Union acknowledged that Faribault has been a wage leader in the comparable cities and that for 2007 3.25% is a reasonable wage settlement.

5. For 2008 the Union proposes a 3.00% wage increase for both firefighters and captains. This is lower than the wage proposal from the City and will save the City approximately \$1,300.00 per year for this unit but almost \$13,000.00 if it were to be done citywide. The .25% concession equates to about \$.05 per hour.

6. The Union noted in Tab 16 of its wage section that if the Union's wage proposal were to be implemented across the City's employees it would save the City some \$14,560.00. The Union asked that the arbitrator take these savings into account when determining the award.

CITY'S POSITION

The City's position is for a 3.25% increase in wages for both firefighters and captains in 2007 and a 3.25% increase for both positions in 2008. This would result in a wage structure as follows:

POSITION	1-1-07	1-1-08
Firefighter	\$17.79/hr or \$4,317/month	\$18.37/hr or \$4,458/month
Captain	\$19.06/hr or \$4,625/month	\$19.68/hr or \$4,776/month

In support of this position the City made the following contentions:

1. The City acknowledged that there are no internal settlements at this point for 2007 or 2008 for any of the City's other labor unions. However the City disagreed that there were no internal comparable figure that can be used here.

2. The City noted that the final positions for the employees represented by Teamsters Local #320 is exactly what the City's position is here, i.e. 3.25% in both 2007 and 2008. The City noted that parties must submit their final positions to BMS pursuant to PELRA thus setting forth what their final negotiation positions are to be prior to interest arbitration. Here IBT #320 did so and for all of the employees they represent. The City further noted that there are nine employees in the contract between the city and the IAFF, Local 665 whereas the vast bulk of the City's employees are represented by IBT #320. Using these figures it is apparent that there are facts upon which the arbitrator can use to establish an internal pattern of wage increases.

3. The City also noted that the small ¼% difference in wage proposals between the City's and Union's final positions amounts to a very small amount of money and nowhere near the increased cost of the Union's health insurance proposal. The City notes that this would save the City some \$1,300.00 as opposed to almost \$39,000.00 in increased cost for the Union's health proposal. At the hearing the City noted that the Union's figures show that the increased cost could be approximately \$65,000.00. Either way, the City argued that the decreased wages for 2008 will in no way constitute a quid pro quo for the increased cost of the Union's health insurance proposal.

4. Regarding external comparables, the City asked that the arbitrator explicitly reject the claim that Mankato be used as an external comparable. Mankato has never been used as a comparable city and was apparently included merely because it is part of the Southern District of the MPFF. That is not a basis for the use of an external jurisdiction.

5. The City argued that the 3.25% for 2007 and 2008 is consistent with the internal pattern of wage increases for the non-union employees, the final positions as stated by the other labor unions in the city and the external comparables and should be awarded.

HEALTH INSURANCE FOR 2007 AND 2008 – ISSUES 3 & 4

UNION'S POSITION

The Union's position is for changes in the health insurance article in relevant part as follows: "Beginning January 1, 2007 the City contribution shall be Eight hundred thirty nine dollars (\$839.00) per month towards the cost of family coverage, seven hundred dollars (\$700.00) per month towards the cost of employee plus one and three hundred and four dollars (\$304.00) per month towards the cost of single coverage with the employee picking up the remaining balance."

"Effective January 1, 2008 the City contribution shall be nine hundred thirty two dollars (\$932.00) per month towards the cost of family coverage, seven hundred seventy six dollars (\$776.00) per month towards the cost of employee plus one and three hundred thirty eight dollars (\$338.00) per month towards the cost of single coverage with the employee picking up the remaining balance"

In support of these positions the Union made the following contentions:

1. The Union once again pointed out that there are no settlements yet and therefore no internal comparables at this point. The fact that several of the other unions have indicated that they are in agreement with the City's position regarding health insurance should not be controlling. There may be other economic issues at work that have created this scenario that were not known in this hearing.

2. The Union acknowledged that its proposed increase for 2007 reflects a 9% increase in health insurance costs. The proposal for 2008 reflects an 11% increase even though the actual figure was again 9%. The Union noted that it had to submit its final positions to BMS before the actual figures for 2008 were known so the Union averaged the increases in costs of health insurance over the past seven years. That averaged 13% over time and the 9% was known for 2007 so the Union simply split the difference at 11% for 2008.

3. The Union then looked to external comparables to determine the most appropriate award for health insurance, since there are no internal comparisons. Tab 8 of the Union's health insurance section shows that most of the comparable jurisdictions pay at least 80% of the health insurance premiums and others pay up to 93% while Faribault pays 73%. The Union claims that it is obvious from this that Faribault is quite low when compared to these external comparable cities. If the Union's position is awarded it would simply bring the respective contribution rates of at least 80-20 into line with other cities. The Union pointed to a recent award in the City of Winona and noted that the arbitrator there awarded an 80-20 split in payment of premiums.

4. The Union also noted that while it could have waited until the final health insurance figures were in it chose to start the process at BMS in order to keep the arbitration process moving. It did not send this to arbitration prematurely, as the City seemed to suggest at the hearing.

5. The Union also noted that its proposal is considerably less than the City's offer for the employee-plus-one coverage. The Union proposes \$700.00 for the employee-plus-one coverage for 2007 and \$776.00 per month for the employee-plus-one coverage for 2008. The City proposes \$815 for both family and employee plus one for 2007 and \$852.00 for that same coverage for 2008. The Union noted that this too will result in some savings to offset the increased cost of their proposal over the City's proposal.

6. The Union pointed to an illustrative exhibit that showed the total cost of the Union's position on health insurance. The total cost to the City if the Union's proposal were to be implemented would only increase the total cost by approximately \$65,000.00. When the total decreased cost of the Union's wage proposal was to be implemented the total cost of the package would be approximately \$50,000.00.

7. In response to the City's claim that there must be a quid pro quo the Union claimed that there is one here in its wage proposal. The Union also noted that there is a quid pro quo in the decreased costs of the employee plus one coverage as compared to the City's proposal. The Union also asserted that there is no strict requirement that there be a dollar of dollar trade-off for a benefit of this nature. The Union made what it claimed was a good faith attempt to offset some of the costs in health insurance here by its reduced wage increase proposal for 2007.

8. The Union also noted that it is not seeking a restructuring of the health insurance program but rather a structuring of it for what is essentially a brand new health insurance program. The labor management committee recommended the addition of the employee plus one level so there is a need to structure the program now. The Union claimed that there is no past program here.

9. The Union also strongly disagreed with the City's claim that there was or has been a policy of the employee and City paying for 50% of the increases in health insurance costs. This would eventually result in a 50-50 split of the total health insurance costs, which the Union asserted most strenuously it will never agree to.

CITY'S POSITION

The City's position is as follows:

"Beginning January 1, 2007 the City contribution shall be Eight hundred fifteen dollars (\$815.00) per month towards the cost of family coverage or employee plus one coverage and two hundred ninety five dollars (\$295.00) per month towards the cost of single coverage with the employee picking up the remaining balance."

"Effective January 1, 2008 the City contribution shall be eight hundred fifty two dollars (\$852.00) per month towards the cost of family coverage or employee plus one coverage and three hundred nine dollars (\$309.00) per month towards the cost of single coverage with the employee picking up the remaining balance"

In support of this the City made the following contentions:

1. The City's main argument is that there is in fact strong evidence of internal consistency in benefits within the City of Faribault and that the City's final position maintains that.

2. The City Council passed a resolution for the non-union employees that is consistent with the City's position in this matter for health insurance.

3. Moreover, the other labor unions have all indicated in their final positions submitted to BMS that they are in agreement with the City's final position regarding health insurance.

4. The City argued that what the Union is in effect doing is proposing a structural change in the way health insurance is delivered in the City and would in all likelihood result in a two-tiered structure for health insurance. There was no reason for this proposed by the Union; no compelling need for it and no quid pro quo even offered by the Union justifying this.

5. Only one employee in the fire unit even has the employee plus one coverage whereas 4 out of the bargaining unit represented by Teamsters #320 have this coverage yet the Teamsters have already proposed in their final positions for their negotiations a health insurance plan that is consistent with the City's proposal here.

6. The City noted that the employee plus one coverage came from discussions in the labor management committee as an option and the City has proposed adding an employee plus one coverage option and to leave the payment the same for it as the family coverage. The City argued that it should not be penalized for having acceded to this recommendation by the labor management committee.

7. The City also pointed out that it has always used a dollar figure for the costs of health insurance not a percentage as suggested by the Union. It introduced several exhibits that showed that it has traditionally done that and has never used percentages of relative contributions as the basis for health insurance proposals.

8. The City asserted that the Union is well aware of the need for internal consistency since it has applied its proposals across the board and essentially acknowledged an internal pattern when it calculated what the cost impact would be for their wage and health insurance proposals applied to all City employees.

9. The City's Tab 44 in its arbitration booklet shows that with the City's wage and health insurance proposal there would still be an increase and would keep the pay for Faribault firefighters where they have been with regard to comparable jurisdictions. The Union's on the other hand would result in an increase that cannot be justified by either a compelling need or any sort of trade-off offered by the Union.

MEMORANDUM AND DISCUSSION

This is a total offer final package arbitration. The arbitrator must therefore select either the City's or the Union's total package. This limitation makes it difficult on occasion to select between positions as there are many times when one party's position is reasonable and justifiable in one respect while in some others another party's position may well be a better choice. With this type of interest arbitration however that option does not exist. The arbitrator must therefore select the most reasonable and justifiable position as a total package.

Here in something of an odd twist, the Union's wage proposal for 2008 is actually slightly lower than that for the City, by ¼%, or about a nickel an hour. The wage proposals for 2007 are the same at a 3.25% increase. The issue here did not so much revolve around the wage as it did over the health insurance however and both wage proposals were eminently justifiable and appropriate given other internal and external comparables.

Faribault has been a wage leader with regard to the comparable jurisdiction and a 3.25% and 3.25% would maintain that relative position. Finally, as noted at the hearing, the City of Mankato is not an appropriate comparable to Faribault. The Union acknowledged this and indicated that it included Mankato simply because it is included in the Union's Southern District. Mankato was therefore not considered in this matter.

Turning to the issue of health insurance, it was apparent that this issue really drove the discussion and this determination. Initially it is clear that except in very rare cases, health insurance is generally a benefit that is largely determined by internal consistency. There are so many different economic and historical considerations between jurisdictions that a comparison of health insurance benefits externally is difficult at best and can in fact lead to some very anomalous results. It is generally best to have the same benefit package among employees in a jurisdiction and this case is no exception.

The Union argued that none of the City's labor unions have settled for 2007 or 2008 and that there is therefore no internal pattern. Moreover, the non-union benefit package should not always drive the discussion of health insurance or there would be little reason to engage in collective bargaining. The public employer would simply need to set whatever the health insurance package is for the non-union employees and apply that across the board. This is inconsistent with the avowed public policy expressed in PELRA of allowing employees to collectively bargain such matters and would radically chill a unions' ability to negotiate on behalf of their members. This is a point well taken but does not alter the fact that here there was persuasive evidence beyond the health benefits given to the non-union employees. It was also evidenced from the Union's submissions that there was at least tacit acknowledgement of the need for internal consistency since the Union submitted several exhibits purporting to show the citywide impact of the implementation of its wage and insurance proposals. This was at least some evidence of the acknowledgement, especially here where no other union has yet settled, that this will set something of a precedent for other wage and benefit awards.

While it is true that no labor unions in the City of Faribault have settled yet there was strong evidence of the positions of several other unions' positions regarding health insurance here. PELRA requires that parties to interest arbitration submit their final positions to the BMS pursuant to Minn. Stat 179A.16, subs. 2 and 3. The evidence showed that Teamsters Local 320 and the City have other matters in dispute but that the Union's final position as submitted to BMS in their pending arbitration matters show agreement between the Union and the City on health insurance. In this matter, the best evidence of what the other unions have or will settle for in that final position as submitted to BMS. This evidence supports the City's position that the rest of the labor unions have agreed with the City on this issue and that the City's position is far more likely to maintain internal consistency in health insurance. There was also some merit to the City's position that the non-union employees have a "me too" provision in the resolution setting their health benefits. Changing this benefit under these circumstances could well result in a very anomalous result and the creation of two separate insurance premium plans for different sets of City employees.

The Union submitted considerable evidence of the City's ability to pay and of the various projects and tax base in the City and argued that the City is healthy and could certainly pay the small increases proposed by the Union. The City submitted evidence to show the plight of the City in terms of its tax base, the loss of Local Government Aid and of the need to be conservative given the tug of war between various factions at the State Legislature insofar as it relates to tax policy and the effect on local units of government. There was no claim that the City was unable to pay either the wage increases or the health insurance benefit. This evidence was largely immaterial to the question of what to award. Simply because a jurisdiction can pay something does not mean it should. There was some merit to the City's argument that the Union's concession of ¼% for 2008 did not sufficiently offset the increased costs of the health insurance to justify changing the insurance plan for the nine employees in this unit from what is quite likely to occur with the other City of Faribault employees.

Moreover, there was some merit to the City's claim that the offset in cost as between the increased cost of the Union's health insurance proposal and the slightly decreased wage proposal are insufficient to justify changing the insurance plan that apparently the vast bulk, if not all, of the remaining city employees have agreed to. Accordingly, the City's position on health insurance is far more in line with the evidence and the generally accepted norms of interest arbitration.

As noted above, this is a total package final offer arbitration and while in a traditional arbitration some parts of one party's position could be awarded and another party's on a different issue that cannot be done here. The jurisdiction is limited to awarding the total package. On balance the City's position on health insurance is far more justifiable and based on the evidence as noted above. As that issue was clearly what drives this matter, the City's final offer must be awarded.

AWARD

The City's position is awarded on a total package final offer basis.

Dated: December 26, 2007

Jeffrey W. Jacobs, arbitrator

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