

IN THE MATTER OF ARBITRATION BETWEEN

**Law Enforcement Labor Services, Inc.,
Local 138 (Police Sergeants)**

and

OPINION AND AWARD

**CONTRACT ARBITRATION
BMS Case No. 06-PN-0798**

The City of Cottage Grove, Minnesota

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of LELS
Terry Herberg, Business Agent
St. Paul, Minnesota

On behalf of City of Cottage Grove
Scott M. Lepak, Esq.
Barna, Guzy & Steffen, Ltd.
Minneapolis, Minnesota

JURISDICTION

In accordance with the Public Employment Labor Relations Act of Minnesota, Minn. Stat. §179A.01, et. seq. (2006), and under the jurisdiction of the State of Minnesota, Bureau of Mediation Services, the above Contract Arbitration was submitted to Joseph L. Daly, on August 29, 2006 at the Cottage Grove, Minnesota City Hall. Post-Hearing Briefs were submitted by the parties on September 12, 2006. The decision was rendered by the Arbitrator on September 30, 2006.

ISSUES AT IMPASSE

The following unresolved issues were certified for interest arbitration:

1. Wages – General Increase year one – Article 20
2. Wages – General Increase year two – Article 20
3. Wages – Shall a Wage Differential be granted to the “Floating Sergeant” – NEW
4. Insurance – Employer Contribution 2006 – Article 21
5. Insurance – Employer Contribution 2007 – Article 21

6. Insurance – Shall Language be Amended to Eliminate Cash in Lieu of Insurance? – Article 21
7. Uniform Allowance – Amount of Employer Contribution in 2006 – Article 17
8. Uniform Allowance – Amount of Employer Contribution in 2007 – Article 17
9. Uniform Allowance – Should the Language be Amended to Provide for a Debit Card and Limit Purchases? – Article 17

The following issues were settled prior to arbitration:

3. Wages – Shall a Wage Differential be Granted to the “Floating Sergeant” – New
7. Uniform Allowance – Amount of Employer Contribution 2006 – Article 17
8. Uniform Allowance – Amount of Employer Contribution 2007 – Article 17
9. Uniform Allowance – Should the Language be Amended to Provide for a Debit Card and Limit Purchases? – Article 17
10. Compensatory Time – Should Language be Amended to Eliminate Employer Discretion and Increase Cap? – Article 24.4

AWARD DECISION AND RATIONALE

Issue #1 and Issue #2 2006 and 2007 Wage Rate Article XXI

Union’s Final Position:

A 4% general increase for 2006; a 3.5% general increase for 2007.

City’s Final Position:

A 2.5% general increase for 2006; a 3.5% general increase for 2007.

AWARD

The final positions of the City for 2006 and 2007 are awarded. The evidence presented at the hearing established that there is a strong history of consistent *internal* general increases. The City noted “the evidence presented at the hearing also established that the City’s final position for 2006 was the same as that provided to non-Union employees as well as negotiated with Police Officer/Investigator, Public Works, City Hall and (when it was in existence) Dispatcher Bargaining Units.” [Post-Hearing Brief of City at 1-2].

The Union contends “there is no internal pattern of settlements in Cottage Grove. Some non-supervisory bargaining groups did settle for 2.5% in 2006, but police captains, who are also police supervisors, received the 6.8% increase”. [Post-Hearing Brief of Union at 4].

The police captains had been receiving a “car allowance”, but in 2006, rather than receiving a “car allowance” they received that same amount as a general increase in their salary. “This was not a pay increase—rather it was simply a recharacterization of existing compensation.” [Post-Hearing Brief of City at 2]. Police Captains are on a non-Union pay Grade III. This non-Union pay grade was adjusted by 2.5% in 2006. Therefore, the police captains did not receive an actual 6.8% pay increase, but simply continued the “car allowance” they had been receiving. But the “car allowance” has now been reclassified as part of existing compensation. For purposes of internal equity in 2006, a 2.5% increase in 2006 is most appropriate.

In terms of *external* comparables, a blended Stanton V and VI groups have been established by the four prior interest arbitration awards. The blended Stanton V and VI groups are neither irrational nor has there been a considerable change in the demographics since the last award. While it is true that Cottage Grove “is one of the fastest growing communities in Minnesota” [Post-Hearing Brief of Union at 8], nevertheless, a 2.5% general increase for 2006 followed by a 3.5% general increase for 2007 will maintain both internal and external comparability. Such increases will also allow the sergeants to match the Consumer Price Index, especially considering that the City also makes a Health Savings Account separate contribution toward medical costs.

The City is in compliance with *pay equity* requirements in their latest pay equity report. The City will remain in compliance with a 2.5% increase for 2006 and a 3.5% increase for 2007. Since pay equity and ability to pay are not in issue, this analysis of internal equity and external comparables should ensure that the sergeants are not left behind by the marketplace.

ISSUE #4
Insurance – Amount of Employer Contribution 2006
Article 21

Union's Final Position:

100% paid Single, \$760 per month Family 1/1/06 to 6/30/06; 100% paid Single, \$665.95 per month Family coverage 7/1/06 to 12/31/06 for employees on the MIC Choice plan. The Union accepts the City proposal for employees enrolled in the HDHP plan.

City's Final Position:

Single:

100% of premium MIC Choice

100% plus \$1040 contribution into HAS into HDHP Plan (on matching basis)

Family:

\$628.34 toward MIC Choice

\$628.34 plus \$2080 contribution into HAS (on matching basis)

Before the September 2, 2004 Contract Arbitration by Arbitrator Richard Miller, the City offered employees a health insurance option that provided employees with “premium coverage”—utilization without deductibles or co-pays. Arbitrator Miller in the September 2, 2004 arbitration accepted the City’s argument that “employees did not have any incentive to be judicious in utilizing health services and the result was high utilization. Health insurers reviewed the utilization factors and raised premiums accordingly”. [Post-Hearing Brief of City at 5].

After arbitrator Miller’s decision, the City continued to offer premium coverage in order to maintain internal equity. But, in an effort to address the issue of high utilization, the City offered employees insurance coverage options, including the ability to select coverage that had participation costs (such as deductibles and co-pays) but at a corresponding lower premium. Unfortunately, lower premiums were not relevant in those instances in which the City was paying for the entire or largest portion of the premium. Employees continued to select coverage under the most expensive plan. Many employees continued to remain in the most expensive plan and continue frequent utilization. [Id.]

Still limited to what it could do regarding limiting coverage, the City then took the step of offering incentives for employees who selected the health insurance coverage that contained employee cost participation in the form of co-pays and deductibles. The City budgeted significant increases to

insurance and designated the additional amounts to encourage movement toward plans where employees had cost participation and reward the employees who were already in these plans. Those employees who remained in the premium plans did not experience a cut in the City's contribution—rather the employees were required to pay for the entire increased costs associated with the premiums for this plan. All of the employee groups, with the exception of the sergeant group at issue in this arbitration, agreed to this incentive approach. [Id. at 6].

As a result of the agreements by the other Bargaining Units and Arbitrator Richard Miller's award, the City was able to take a unified step to address the issue of "over-utilization" in the most recent round of negotiations that led to agreement by the Police Officer/Investigator and Public Works Bargaining Units. The City was able to introduce a new incentive for employees, i.e., participation in a Health Savings Account (HSA). The City's approach of contributing amounts outside of the premium adopted in the last negotiations was improved in that matching contributions to a HSA provided those employees who selected the high deductible plan with additional flexibility to spend these contributions on a tax-free basis. In short, this new mechanism allowed the City and its employees to continue the prior reward program for employees moving or remaining in the City's base plan. It has been noted by arbitrator Mario Bognanno "by pulling risk and by spreading cost, the individual employer can buy insurance protection at a far more reasonable price. Hence, in the health area, the comparison focused shifts from the 'external' to the 'internal'". Elkouri and Elkouri, *How Arbitration Works*, 5th Edition, pp. 1111-1112 (BNA 2003), citing *City of Farmington*, 85 LA 460, 464 (Arbitrator Bognanno, 1985).

The Union argues "the City has basically taken from employees electing to stay on the MIC Choice 1000 Plan and given it to employees electing HDHP Plan. Employees staying on the MIC Choice 1000 Plan understand that they will pay more to stay on this plan, but don't understand the inequitable proposal by the City to pay HDHP members \$801.67 per month for health insurance and only \$628.34 to them". [Union Arbitration Brief, cited in Post-Hearing Brief of Employer at 8-9].

In answer to the Union's argument, the City of Cottage Grove contends "the primary flaw in the Union's argument is that the City has not taken money from the employees in the MIC Choice and given it to employees electing the HDHP Plan. The City's dollar contribution toward the expense of MIC Choice Plan has not decreased. The Union's primary complaint is that the City has lavished those employees choosing the more affordable employee participatory coverage with benefits to reward and encourage these employees. Contrary to the Union's assertion, these employees staying on the MIC Choice 1000 Plan do not understand they will have to pay more to stay on this Plan". [Id. at 9].

The City's Plan, unwillingly imposed on members of this Bargaining Unit by Arbitrator Richard Miller, but accepted by every other employee group, seems to be achieving its main objectives. Out-of-pocket health insurance premium costs per month for existing Bargaining Unit employees who have been in the Bargaining Unit under the 2004-2005 Collective Bargaining Agreement has declined. [See Post-Hearing Brief of Employer at 9]. The Sergeants group will likely benefit from the City's proposal regardless of the option they choose. Adding an HSA with the City matching contribution provides a new means to address health care costs. For example, a Bargaining Unit employee who chooses a HSA Plan can realize a premium savings of \$228.75 per month (\$2,745.00 per year). An employee taking this savings every month and putting \$2,120.00 in an HSA with a matching \$2,080.00 City contribution would cover the \$4,200.00 maximum out-of-pocket costs to the employee. Given that this amount is a tax-free contribution, the actual savings can be higher. The Employee could then take the remaining \$625.00 savings and receive it as a taxable compensation or place it in a deferred compensation account. The employee should benefit from the new plan in each instance. Internal equity and the actual and practical application of the benefit to employees supports the City's final position on this matter.

ISSUE #6

Insurance - Waiver Amount, If Any

Union's Final Position:

No change.

City's Final Position:

\$300.00 in 2006, \$275.00 in 2007.

AWARD

The City's final position is awarded

RATIONALE

The fact that at this time there are no current Bargaining Unit members who have waived coverage, effectively precludes a negative impact on the present Bargaining Unit members by adopting the City's position. As noted in the existing language of the Collective Bargaining Agreement, "those employees currently enrolled in medical coverage will not be allowed to waive medical coverage in the future". This precludes existing Bargaining Unit members from ever being permitted to waive coverage or receive any amount for waiving coverage.

Since the provision does not apply to any existing or new employees, there is no affect on the Bargaining Unit from reducing the waiver amount. Where there is no negative impact of the change on existing Bargaining Unit employees or new employees, the key consideration should be internal consistency. The City's proposed waiver amount would provide internal consistency with the group that would logically be the most likely to promote into the sergeant classification. The waiver amounts proposed by the City for 2006 also applies to the non-Union captain classification. Internal consistency supports the City's final position on this issue.

**Issue #5
Insurance-Amount of Employer Contribution 2007
Article XXI**

Union's Final Position:

Re-opener for 2007

City's Final Position:

Single: 90% of premium MIC Choice 1000

100% of premium plus \$650.00 contribution in HSA (on matching basis), HDHP

Family: Same as base plan contribution toward HSA premium MIC Choice 1000, 75% of premium plus \$1,300.00 contribution into HSA (on matching basis), HDHP.

AWARD

The Union's final position is awarded. Health insurance rates are not available for 2007. Decisions regarding 2007 should be made based on data, not conjecture. An insurance reopener is a reasonable way to proceed. The aggressive changes being made in health insurance need to be evaluated based on the actual increases for 2007.

ISSUE #11

Injury on Duty—Shall the Language Be Changed to Allow Employees to Be Reimbursed for Reasonable Replacement Cost Only?

Union's Final Position:

No change.

City's Final Position:

The City agrees to pay reasonable replacement costs for all employees' glasses, hearing aid or any other prosthetic device broken, while in the performance of duties.

AWARD

The Union's final position is awarded.

RATIONALE

The Union is proposing no change in the present language. This language has been in place for years and there have been no problems. There is no compelling reason to change the existing language.

Dated: September 30, 2006.

Joseph L. Daly
Arbitrator