

IN THE MATTER OF ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc.,  
Local 248 (Police Sergeants)

and

The City of Fergus Falls, Minnesota

**OPINION AND AWARD**

CONTRACT ARBITRATION

BMS Case No. 06-PN-0823

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**ARBITRATOR**

Joseph L. Daly

**APPEARANCES**

On behalf of LELS  
Kenneth Pilcher, Business Agent  
St. Paul, Minnesota

On behalf of The City of Fergus Falls  
Kristi A. Hastings, Esq.  
Pemberton, Sorlie, Rufer, Kershner  
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 September 29, 2006, at the Fergus Falls, Minnesota City Hall. Post-Hearing Briefs were received by the Arbitrator on October 18, 2006—having been forwarded by the Bureau of Mediation Services to the Arbitrator. The decision was rendered by the Arbitrator on November 1, 2006.

**ISSUES AT IMPASSE**

The following unresolved issues were certified for interest arbitration:

1. Work Year – Should Language Be Added Defining The Normal Work Year? - Art. 7, NEW Section
2. Overtime – Method Of Compensation When Overtime Is Earned – Art. 8
3. Holidays – Number Of Holidays And Amount Of Compensation For Holidays – Art. 9
4. Severance – Amount Of Severance Pay Upon Resignation Or Retirement – Art. 11

5. Insurance – Amount Of Employer Contribution For 2006 – Art. 12
6. Insurance – Amount Of Employer Contribution For 2007 – Art. 12
7. Salary – Amount Of General Increase For 2006 – Appendix
8. Salary – Amount Of General Increase For 2007 – Appendix
9. Uniform – Amount Of Uniform Allowance And Method of Payment – Art. 16.4

**AWARD, DECISION AND RATIONALE**

**ISSUE #1 – WORK YEAR - SHOULD LANGUAGE BE ADDED DEFINING THE NORMAL WORK YEAR – ARTICLE 7, NEW SECTION**

**Union’s Final Position:**

Add the following new language:

- 7.2 The normal work year shall consist of 2,080 hours to be accounted for by each employee through:
  - (1) Scheduled hours of work
  - (2) Authorized leave time
  - (3) Holidays
  - (4) Training

**City’s Final Position:**

The work year be defined as per the Fair Labor Standards Act (FLSA).

**AWARD**

The final positions of the City is awarded. The new language is not needed and the parties should be governed by the Fair Labor Standards Act as they have been in the past. The FLSA (29 USC Section 207) provides that employees must be compensated at 1-1/2 times their regular rate of pay for hours worked in excess of 40. The FLSA provides many exceptions to this rule of overtime and one relates directly to law enforcement at “7k”. (As it is commonly referred to), the FLSA provides an exemption for law enforcement:

- (k) No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment .... of any employee in law enforcement activities if—
  - (1) In a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of
    - (A) 216 hours, or

(B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least seven, but not less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 dates,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. *Exhibit 7, pg. 5.*

The Union argues that without the new language setting a 40-hour work week, employees could find themselves working in excess of 2,080 hours per year without any compensation. However, Ms. Brenda Cossett, Human Resources Director for the City, testified that this has not occurred. The Union provides no compelling reason to add the language since the City is in complete compliance with FLSA.

## **ISSUE #2 - OVERTIME - METHOD OF COMPENSATION WHEN OVERTIME IS EARNED – ART. 8**

### **Union's Position:**

Change the overtime language as follows:

8.1 ~~Compensatory Time Off~~ **Over Time:** Employees will earn either cash or be given compensatory time off for ~~extra~~ hours worked outside their assigned shift. The cash or cCompensatory time earned will be given paid at a rate of one and one-half (1 ½) times hours for each hour worked the employee's regular straight time hourly rate. ~~Supervisor will attempt to insure that compensatory time off will be used during the contract year.~~

### **City's Position:**

No change to the existing language.

### **AWARD**

The final position of the City is awarded

The Union proposes a language change that, in some regard, would change the present compensatory time policy into an overtime policy. The Union prefers that employees have the option of taking cash pay-outs of overtime instead of compensatory time off.

The City takes the position that this language should not be amended. The City is concerned about budgetary management and “burn out” of its police officers. Presently, Article 8.3 of the Collective Bargaining Agreement allows employees the option of converting a total of 100 hours per year of compensatory time into cash payment. If employees are allowed to take cash in lieu of all compensatory time off, it would be difficult to budget for an unlimited amount of overtime. Testimony at the arbitration hearing was that this would “become a serious financial issue for the City”. [Post-Hearing Brief of City at 4]. The City is extremely watchful of compensatory time balances for employees.

**ISSUE #3 – HOLIDAYS – NUMBER OF HOLIDAYS AND AMOUNT OF COMPENSATION FOR HOLIDAYS – ART. 9**

**Union’s Position:**

Add Christmas Eve (1/2 Day), 6 p.m. to midnight for rotating shift people only) to the list of paid holidays in Section 9.1.

No change to the language in Section 9.3 that provides pay at one and one-half (1 ½) times the employee’s regular straight time rate for all hours worked on the holidays listed in Section 9.1.

**City’s Position:**

No change to the existing language.

**AWARD**

The final position of the Union is awarded. It is recognized by arbitrators in decisions concerning recognized holidays and premium pay for hours worked on holidays that law enforcement is unique among public employees. Working for a 24 hours per day, seven days per week public agency, law enforcement employees are often deprived the opportunity to spend significant and important holiday time with their families. See, *Law Enforcement Labor Services and City of White Bear Lake*,

BMS 02-PN-29 (2002) (Jay Arb.); *Law Enforcement Labor Services and City of Blaine*, BMS 04-PN-749 (2004) (Holmes Arb.).

The City contends that the LELS groups are not the only ones working nights. For example, the garbage burner employees work 24 hours a day. The City further contends that the police sergeants already have one additional holiday, i.e., Easter, compared with other employee groups within the City. While internal comparisons with other employees of the Employer is a primary criterion for determining a fringe benefit award in interest arbitration proceedings, nevertheless, “external comparisons [can also] suggest a strong basis for providing extra compensation for holidays worked at time and one-half (1 ½). [Supra, *LELS and City of White Bear Lake*, Arbitrator Jay]. “External comparisons are therefore as relevant for this particular fringe benefit as internal comparisons.” [Supra, *LELS and City of Blaine*, Arbitrator Holmes]. External comparisons show that this specific fringe benefit is common.

**ISSUE #4 – SEVERANCE AMOUNT OF SEVERANCE PAY UPON RESIGNATION OR RETIREMENT – ART. 11**

**Union’s Position:**

Change the severance pay language as follows:

11.9 Upon retirement from employment, or termination in good standing, providing a two week notice has been given, one-half (50%) of the unused accumulated sick leave, up to a maximum of ~~six~~ seven hundred fifty (600 750) hours, shall be granted as severance pay to the employee.

**City’s Position:**

No change to the existing language.

**AWARD**

The final position of the City is awarded. The six hundred (600) hour maximum is consistent with other city groups/unions. The standard in interest arbitration when a fringe benefit like severance is being requested is consistency of internal comparables. The LELS groups, teamsters and supervisory group all have the same language which provides them with fifty percent (50%) of the maximum

accumulation of six hundred (600) hours upon retirement or termination in good standing. There is a consistent internal pattern.

The Union argues that a hundred fifty (150) hour increase in the severance bank is proper because there has been no enhancement since at least 1985 and because the nature of their work is risky, they expose themselves to injury and their work is unpredictable. However, City Administrator Mark Sievert testified those very concerns were addressed when the City's pay schedule and Step system were established [see Post-Hearing Brief of City at 7]. The Union members pay is already adjusted to take concerns with the nature of law enforcement to heart. [Id.]

#### **ISSUE #5 – INSURANCE – AMOUNT OF EMPLOYER CONTRIBUTION FOR 2006 – ART. 12**

##### **Union's Position:**

Change the insurance language as follows:

- 12.2 Beginning January 1, 2006, The EMPLOYER – will pay 100% of the cost contribute up to a maximum of \$620.00 per month per employee selecting the 70/30 family plan coverage towards the cost of family health coverage for the contract period 1/1/04 to 12/31/04. Effective 1/1/05 the cap increases to \$650.00 per month per employee selecting family coverage: Employees who select a more expensive family plan coverage will pay the additional cost between the plan the employee selected and the Employer's contribution to the 70/30 plan.

##### **City's Position:**

For 2006, increase the Employer's contribution for family insurance by \$47.00 per month to \$697.00 per month.

#### **AWARD**

The final position of the City for 2006 is awarded. See Issue #6 for discussion.

#### **ISSUE #6 – INSURANCE - AMOUNT OF EMPLOYER CONTRIBUTION FOR 2007 – ART. 12**

##### **Union's Position:**

The Union proposes the language proposed for 2006 be retained for 2007.

- 12.2 Beginning January 1, 2006, The EMPLOYER will pay 100% of the cost contribute up to a maximum of \$620.00 per month per employee selecting the 70/30 family plan coverage towards the cost of family health coverage for the contract period 1/1/04 to 12/31/04.

Effective 1/1/05 the cap increases to \$650.00 per month per employee selecting family coverage: Employees who select a more expensive family plan coverage will pay the additional cost between the plan the employee selected and the Employer's contribution to the 70/30 plan.

**City's Position:**

For 2007, increase the Employer's contribution for family insurance by \$50.00 per month to \$747.00 per month.

**AWARD**

The final position of the City is awarded.

The majority of arbitrators have ruled that the insurance contribution for all employees should be equal and that the most important factors for comparisons are internal comparables. See e.g. *LELS and City of New Brighton*, BMS Case No. 06-PN-36 (2006) (Arbitrator Kircher).

The Union argues that the City does not have an internal pattern with regards to insurance contributions. "The data shows the police sergeants have negotiated Employer contributions for family insurance different from some of the other employee groups in both 2001 and 2005". [Post-Hearing Brief of Union at 10]. However, the City counters by saying "this is simply not the case". [Post-Hearing Brief of City at 8]. The Teamsters settled their 2006-2000 Collective Bargaining Agreement with the City with a \$697.00 contribution in 2006 and a \$747.00 contribution in 2007. The same is true for the Supervisory and Professionals group. [Post-Hearing Brief of City at 8]. If the Union's position were granted it would provide the sergeants with the greater insurance benefit than given to other groups and unrepresented employees within the City. [Id.] The City prefers to continue to negotiate lump sum contributions for health insurance and allow their employees to choose what plan best fits for each employee.

**ISSUE #7 – SALARY – AMOUNT OF GENERAL INCREASE FOR 2006 – APPENDIX**

**Union's Position:**

A general increase for 2006 of 3.5% over the 2005 rates.

**City's Position:**

A 2.5% salary schedule adjustment for 2006.

**AWARD**

The final position of the City is awarded. See Issue #8 for discussion.

**ISSUE #8 – SALARY – AMOUNT OF GENERAL INCREASE FOR 2007 –  
APPENDIX**

**Union's Position:**

A general increase for 2007 of 3.5% over the 2006 rates.

**City's Position:**

A 2.5% salary schedule adjustment for 2007.

**AWARD**

The final position of the City is awarded. The basic framework for determining appropriate wage rates are:

1. Employer's ability to pay;
2. Internal pay;
3. External or market comparisons; and
4. Other economic factors, including costs of living.

The parties stipulated at the beginning of arbitration that the City's ability to pay was not being contested in this hearing.

City Administrator Mark Sievert testified that the accumulative effect of increased salaries every year is a concern as well as a desire to have internal consistency. For 2006-2007, all the other Union and non-Union groups at the City have settled for a 2.5% wage increase.

While it is true that in the years 2004 and 2005 the City was not internally consistent with wage increases, the settlements were made because external comparables showed that wages for some groups were lagging behind. The lack of external comparability was fixed through wage increases for the particular groups that were behind.

The Union believes that the appropriate external market comparison group for the City of Fergus Falls sergeants are Alexandria, Bemidji, Brainerd, Buffalo, Hutchinson, Marshall and Worthington. [See Post-Hearing Brief of Union at 16]. “The Union selected these cities based on three clear and concise criteria. First, all the cities are outside of the Twin City metropolitan area. Second, the populations of the cities are between \$10,000 and \$15,000, finally, each of these city sergeants are supervisors under the Public Employment Labor Relations Act (PELRA), thus insuring the duties and responsibilities are similar.” [Id. at 16-17]. Based on this comparable group, the Union contends “it is readily apparent the Union’s 3.5% increases in 2006 and again in 2007 are appropriate and helps insure the relative rank of these sergeants is not eroded”. [Id. at 17-18].

On the other hand, the City uses the Cluster Analysis of Comparable Cities designed by the Coalition of Greater Minnesota Cities (CGMC) as its external comparability to Fergus Falls. These cities include Alexandria, Brainerd, Bemidji, Detroit Lakes, East Grand Forks, Fairmont, Marshall and Willmar. [Post-Hearing Brief of City at 12]. The City contends this type of statistical analysis takes public employers away from the “pick and choose” method of the past, choosing cities that set a particular argument for a particular purpose. Rather, “the Employer has a realistic view of wages and benefits provided other similar Employers”. [Post-Hearing Brief of City at 13]. Using this CGMC Cluster Analysis of Comparable Cities, the average maximum salary for a sergeant in the group is \$53,796.53. The maximum salary for a sergeant at the City of Fergus Falls is \$58,246.24. The minimum starting pay average using the cluster is \$47,793.19. The minimum for Fergus Falls is \$44,835.96, assuming a 2.5% increase. Using the cluster analysis provided by the City, the City of Fergus Falls is above the average in wages.

Providing a 2.5% increase for 2006 and 2007 maintains the City’s balance pay and benefits provided to public employees despite their gender. Also, it should maintain the City’s compliance with the Pay Equity Act.

**ISSUE #9 – UNIFORM - AMOUNT OF UNIFORM ALLOWANCE AND METHOD OF  
PAYMENT – ART. 16.4**

**Union’s Position:**

Change the Uniform allowance language as follows:

16.4 Beginning in 2006, The uniform allowance will be \$600.00 \$700.00 for employees. In 2007, the uniform allowance will be \$750.00. The uniform allowance is for the replacement and purchase of approved uniform items, equipment and supplies. Employees will make the purchases, and will be reimbursed by the employer upon submission of a city expense reimbursement form and a receipt identifying the item purchased and the cost of the item. Half of the allowance is to be paid directly to each employee on the first Council meeting in April and the other half on the first Council meeting in October of each year. Uniform allowances can be used for shoes on a style proposed by the UNION and approved by the Department Head.

**City’s Position:**

Change the Uniform allowance language as follows:

16.4 Half of the allowance is to be paid directly to each employee on the first Council meeting in April and the other half on the first Council meeting in October of each year. Uniform allowances can be used for shoes on a style proposed by the UNION and approved by the Department Head. The uniform allowance will be paid on a reimbursement basis for employees purchasing work related clothing, shoe or gear times. The uniform allowance to be paid in 2006 will be \$600 and will be \$600 in 2007. Employees can carry over up to \$600 with a maximum accumulation of not more than \$1200. The Uniform allowance will be paid pro-rata for officers starting or terminating during the year based on full months of service.

**AWARD**

The final position of the City is awarded.

The City and the Union agree that the language should be changed to a reimbursement basis, as opposed to a cash basis. Under the City’s language, an employee would be allowed to carry over \$600 to reach a maximum accumulation of \$1,200 to purchase higher ticket items, such as leather duty belts, leather jackets, etc.

The Union and City differ, however, in their proposals for the appropriate amount of a uniform contribution. The Union seeks \$700 in 2006 and \$750 in 2007. Human Resources Director Brenda Cossett testified that by virtue of changing from a cash allowance to a reimbursement basis, the

sergeants are, in effect, receiving a 30-40% increase in the amount of allowance because cash payments resulted in increased taxation for the employee as supplemental income. Therefore, even though the allowance is proposed to remain at \$600, it has greater purchasing power than the same amount under a cash system. The new system will also have the benefit of assuring that employees are actually spending their allowance on uniforms and safety equipment.

Dated: November 1, 2006.

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Joseph L. Daly  
Arbitrator