

OPINION AND AWARD

OF

DAVID S. PAULL

In the Matter of the Interest Arbitration Between

Law Enforcement Labor Services, Inc., Local No. 77

AND

City of Maplewood, Minnesota

(Police Officers Unit - Interest)

BMS Case No. 07 - PN - 0516
Date Issued: July 23, 2007

Appearances

On behalf of Law Enforcement Labor Services, Inc., Local No. 77

Jack Chambers
John Bohl

Business Agent
Union Steward / Police Officer

On behalf of the City of Stillwater

Charles F. Clippert
John R. Grieme
Steven R. Roy
Emily Babcock

Labor Relations Attorney - City of Maplewood
Labor Relations Attorney – City of Maplewood
Consultant
Law clerk to Mr. Clippert

Statement of Jurisdiction

Law Enforcement Labor Services, Inc., Local No. 77 (Union) is the exclusive bargaining representative of a bargaining unit comprised of police officers employed by the City of Maplewood Police Department (City or Employer).

The parties are signatory to a collective bargaining agreement effective for the period beginning January 1, 2005 and ending December 31, 2006 (CBA). The bargaining unit includes a canine officer position and a paramedic. There are approximately 40 employees currently covered by the CBA.

Negotiations for a successor collective bargaining agreement were conducted, but the parties were unable to resolve all outstanding issues. On December 22, 2006, the Minnesota Bureau of Mediation Services (BMS) received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On December 29, 2006, the BMS certified one item for arbitration pursuant to *M.S. 179A.16, subd. 2* and *Minn. Rule 5510.2930*. The sole issue certified was the level of wage increase for 2007, pursuant to Article 13 of the CBA.

The arbitrator was selected from a panel provided by the BMS. The hearing was conducted on Wednesday, June 6, 2007, at the Maplewood City Hall. The parties were provided with an opportunity to present evidence in support of their respective positions. The parties also agreed to submit post-hearing briefs postmarked Friday, June 22, 2007.

The briefs were postmarked in a timely manner and the last brief was received on Tuesday, June 26, 2007.

The record was closed after the briefs were received. On Saturday, June 30, 2007, the arbitrator requested that the parties again provide the names and positions of all persons attending the hearing. This information was supplied by the parties pursuant to this request.

Wage Rates – General Increases 2007

Article 13, Section 13.1

Union Proposal

The Union proposes a general increase of 4.5%, effective January 1, 2007.

City Proposal

The City proposes a general increase of 3.0%, effective January 1, 2007.

Award

Effective January 1, 2007, the bargaining unit shall be awarded a general wage increase of 3.5%.

Analysis

Preliminary Matters

Generally, the resolution of interest arbitration disputes depends on several factors, including internal wage comparisons, the employer's ability to pay, external market wage comparisons and cost of living. Where applicable, it is proper to consider the amount of turnover in the bargaining unit or the degree to which employees have been retained. The law further provides that any award consider the provisions of the

Local Government Pay Equity Act, *Minn. Stat. Sec. 471.991 et. seq.* (Pay Equity Act).

However, as pointed out in the Union's brief, an interest arbitration award may not be based solely on pay equity considerations. *See, Law Enforcement Labor Services, Inc. and City of White Bear Lake*, BMS 03-PN-342 (Frankman, 2003).

Using these factors and the evidenced adduced at the hearing, it is the duty of the arbitrator to ascertain, so far as is possible, what the parties would have agreed to if they had been able to conclude bargaining successfully, without economic action.

Neither party submitted evidence relating to the factor of retention/turnover. While it submitted evidence on all other factors, the Union principally relies on evidence relating to the City's ability to pay, internal pay equity, external wage comparisons and cost of living. The City produced evidence relating to internal wage consistency, external wage comparisons and cost of living. The City notes that, regardless of the evidence it presented, the Union's exhibits "actually support[s] the City's position that a 3% wage increase is reasonable and appropriate."

It is noted that the Ramsey County city of Maplewood, according to the testimony and stipulations of the parties, is approximately 19.13 square miles in size. The 2000 census indicates that approximately 35,000 people resided in Maplewood at that time, about a 12% increase to the population as reported by the 1990 census.

Ability to Pay

The City does not contend that it lacks the ability to pay the 4.5% general increase sought by the Union. Nor does it contest the Union's estimate that the cost of the proposal is approximately \$34,600.00. The Union refers to exhibits establishing that the City's 2007 general fund contained \$6,229,136.00.

Comparing Internal Settlements

2007 Settlements on Hearing Date

The evidence of internal settlements was provided by the City. In addition to the police unit, the City sets wages and working conditions with six other employee groups. These groups are (1) an AFSCME unit of clerical, maintenance and technical personnel consisting of approximately 110 employees, (2) a group of confidential and supervisory personnel consisting of approximately 20-25 employees, (3) a unit of firefighters consisting of approximately 14 employees, (4) a small unit of firefighter supervisors consisting of approximately 4 employees, (5) a unit of police sergeants consisting of approximately 7 employees and (6) a group of general supervisors (Metro Supervisors) consisting of approximately 20 employees.

Of these six groups, three have reached final settlement on the question of wages. The AFMSCE unit, the sergeants unit and the Metro Supervisors have all settled at the 3% level for 2007. On behalf of the City, Steven R. Roy, further testified that all of the City's collective bargaining units had agreed to 3% increases in the prior contracting

period. Mr. Roy further testified that these three units, the Metro Supervisors, the Sergeants and AFSCME, have agreed to a 3% increase for 2008.

The City also notes that a unit of Firefighter Dispatchers has additionally settled at 3%. However, the dispatchers, previously employed by the City, are now employed by Ramsey County. This reduces the evidentiary value of this particular settlement.

Positions of the Parties

In support of its position, the City argues that “Internal market comparisons are clearly the single most important factor in determining wage increases through interest arbitration,” citing *Law Enforcement Labor Services and the City of Marshall*, BMS No. 06-PN-0742 (Remington, 2007).

The Union challenges the City’s evidence of internal comparisons by focusing on the sergeants’ bargaining unit. The Union takes the position that the sergeant’s unit is not helpful, because their total economic package is actually in excess of 3%.

First, the Union contends that beginning in 2002 and extending through 2003, the sergeants received additional compensation due to modifications to the City’s pay structure. Specifically, the police sergeants received a 6.92% increase in 2002 and a 5.96% increase in 2003. The City does not dispute that the increases to the sergeants unit included a restructuring of the merit step levels. However, it contends that these facts are not probative because the wage levels of the police officer unit were previously restructured by the City in a similar manner. Thus, contends the City, the Union incorrectly seeks to distinguish the sergeants unit on the basis of an increase “this Union already enjoys.”

The City further questions the propriety of using the sergeants percentage wage increase for 2002 and 2003, since the statistic includes increases granted outside the collective bargaining process. “The charge includes merit pay increases along with wage increases,” argues the City, “so the chart does not accurately reflect the bargain for wage increases the sergeants received.”

Additionally, the City contends that the two jobs are “qualitatively different from each other” under *MS. 471.992*. Sergeants are required to have more responsibility than police officers,” the City maintains. An award equal to the 4.5% increase proposed by the Union, the City asserts, “would cause the highest paid police officer to make almost the same as the lowest paid sergeants, providing police officers less of an incentive to take on the added responsibility of sergeants.”

Further, the Union argues, a longevity program was reinstated by the City for the sergeants unit, providing an addition 2% after 4 years of service and 4% after 8 years. Based on this evidence, the Union contends that the “economic package provided the sergeants far exceed a wage increase of 3% each of the 2 years.” The City believes it is not appropriate to consider the benefits such as longevity, since a comparison of benefits has not been applied consistently.

The Union makes one additional argument that makes an indirect challenge to the City’s evidence of internal comparisons. Specifically, the Union contends the City’s pay equity status reduces the probative value of the internal comparables. The Union points out that the City is currently out of compliance with the pay equity law. “Awarding the Union’s wage request for 2007,” the Union asserts, will not put the City “out of compliance with Pay Equity.”

The City counters the Union's position by questioning its pertinence. "[I]t does not matter that their proposed wage increase would put the City of Maplewood even further out of compliance with pay equity . . . The effect to the City's pay equity is a collateral consequence to the Union's demanded wage increase." In any event, the City argues, awarding the Union's position would exacerbate the current pay equity situation, because a disproportionate number of males will receive pay increases beyond what other female union employees received. To the City, an award based on the Union's proposal "only moves Maplewood further from that goal."

Analysis of Internal Data

The City's evaluation of the rules as applied to interest arbitration disputes is essentially correct. Internal market comparisons are, in the opinion of the undersigned, the most important factor in determining wage rates.

The City has certainly submitted ample evidence to show the emerging pattern of internal across-the-board wage increases for 2007 is 3%. However, as of the date of the hearing, the percentage wage increase for three of the six employee groups still employed by the City are still open. In addition to the police officers, the metro supervisors, the firefighters and firefighter supervisors and the confidential unit have not yet settled. This block of employees consists of approximately 37-38 % of all employees contained within the compared groups. Other than the information relating to the sergeants unit for 2002 and 2003, there does not appear to be any evidence of the wage history applying to these various groups. The absence of historical wage evidence makes a determination of employee wage patterns more difficult.

It also appears that the City has recently significantly adjusted the wage rate for the sergeant's unit. The record indicates that the sergeants did receive a "merit" wage settlement 2002 and 2003 of 6.92% and 5.96% respectively. This is a significant raise, demonstrating that, to some extent in the recent past, the internal wage pattern has been influenced by market considerations.

This influence is confirmed by the City's position that a similar restructuring was, at some point in the past, applied to the police officer unit. However, evidence of this particular adjustment was not provided. There is no specific evidence of when this adjustment was made or in what amount.

The City's contention that the units are "qualitatively different," while certainly true, is not very helpful to the internal analysis. In the internal category, all the various groups of employees are different.

The City contends that an award of the Union's wage proposal would reduce the incentive for police officers to advance to the sergeant level by closing the differential. The effect of a wage award on the differential between police officers and sergeants is a matter worthy of consideration. However, the 3.5% awarded is supported by the facts relating to this contention.

The top wage rate for a police officer in 2006 was \$4953.13. The starting wage for a police sergeant in 2006 was \$5680.15. There is a difference of \$727.02 between the two wage rates – amounting to approximately 14% of the top police wage. With the awarded 3.5% increase, the top police officer wage for 2007 will be \$5101.72. The starting wage for a first level sergeant in 2007 is \$5850.55. This is a difference in the two wage rates of approximately \$748.83 – also a differential of 14%. Thus, the gap

between the top police wage and the starting sergeant wage will not be changed by the award.

The Union's contention that the internal comparison should be influenced by the reinstatement of the sergeant longevity program has been considered. The City's response to this contention has merit. A benefit comparison is not helpful, unless all the benefits are presented. Since the parties presented no dispute over fringe benefits, the record is understandably short on this type of information.

Pay equity pursuant to Minnesota's Local Government Pay Equity Act (Pay Equity Act) has been considered. The City has recently reported to the Minnesota Department of Employee Relations. As currently configured, the police officer bargaining unit appears to be a male dominated class and the City does not appear to be in compliance. The City states that it is in the process of resolving this situation. The City maintains that the wage increase proposed by the Union should not be awarded because such an award would result in an exacerbation of the "pay equity disparity." This is certainly true. However, by this analysis, even an award consistent with the City's proposal would create the same effect.

Based on the internal wage data provided, the record does appear to support a percentage increase above that proposed by the City.

External Comparison

Use of Stanton 5 Comparison Group

The Union and the City do not agree on the jurisdictions that constitute an appropriate marketplace comparison group for the Maplewood bargaining unit. The Union suggests that the Stanton Group 5 is proper. This group is comprised simply of metropolitan cities over 25,000 in population. The record establishes that the Stanton Group 5 has been used by the parties in the past without objection by the City.

Based on the Stanton 5 Group, the Union contends, the police officer unit has “steadily lost ground” in terms of its comparative wage standing. The Union’s exhibits show that, between 2004 and 2005, the police officers dropped from .09% above the average top wage to .09% below. In 2006, according to the Union, the police officers dropped even further, to .61% below the average top wage. The Union further argues that the sergeants have maintained their standing at above average levels, up from below average level in 2004, 2005 and 2006.

To place the Maplewood police officers at the same standing as the sergeants, the Union contends, an increase of at least 4.19% is required. The Union notes that Brooklyn Park and Roseville have not yet settled, leaving open the possibility that the average could be even higher than it is now.

The 2006 average top wage for a Maplewood patrol officer is \$4953.13. For year 2007, the average top wage for patrol officers, with all but three of the 25 cities contained in the Stanton Group 5 list, is \$5158.93. The average percentage increase for 2007 is 3.34%.

The City does not contest these figures, based on the Stanton list. Rather, the City proposes that a new list of comparable cities be adopted, a list developed by the League of Minnesota Cities. Pursuant to this list, only cities with populations between 30,000 and 50,00 are considered. These include Edina, Richfield, Apple Valley, Inver Grove Heights, St. Louis Park, Roseville and Cottage Grove.

Using this list of external comparables, the City contends that the 3% offer, when combined with the \$100 per month deferred compensation raises the patrol officer top wage to \$62,408. This wage, the City points out, is larger than any of the other compared cities.

The City offers several reasons in support of the acceptance of the comparables drawn from the League. First, it maintains that the “Stanton organization no longer updates or mains wage data,” thus reducing on foundational grounds the probative value of the cities included. In addition, the City argues, the Stanton Group contains cities that are not comparable. As examples, it refers to St. Cloud, which is not a metropolitan city. The City further refers to population anomalies. “Bloomington, the third largest city in the State is treated the same as Oakdale.” Further objections are lodged based the settlements themselves. “If the highest salary from Eden Prairie is removed form the calculation, the average annual salary for 2006 become \$4,969 per month,” only \$16.27 less than the Maplewood average. Using the City’s list of comparables, the bargaining unit would stand first among the comparable listed.

The parties have relied on the Stanton list of comparable cities in the past. Given this prior reliance, a change in the list of comparable jurisdictions should be based

only on evidence that is clearly compelling. The evidence presented by the City for the change, while pertinent, does not rise to this level.

The past adherence of the City to the Stanton list is inconsistent with its current contention that the jurisdictions are now incomparable or include cities that “skew” the result. Whether or not the Stanton organization currently updates or maintains wage data is not necessarily a reason to exclude the list. The City does not suggest that the Stanton organization has failed to keep the population data current. Population data is the basis for the Stanton groupings. The parties can, and should be relied upon to supply the pertinent contract and wage information.

Retaining 2005 Wage Position

Based on the record and the contentions of the parties, the relative standing of the bargaining unit among the various comparable jurisdictions is of interest. For 2005, the most recent bargaining wage settlement between these parties, the top police officer wage rate was \$4807.48, only \$4.24 (.09%) below the Stanton 5 Group average. This wage placed the bargaining unit thirteenth on the list of external jurisdictions for 2005. The 3.5% increase awarded is well supported because the resulting top monthly wage of \$5126.48 also places the bargaining unit thirteenth, the same as the last bargained year. The percentage increase is further supported by the average increase listed in the City’s list of external comparables, which is also 3.5%.

Cost of Living and Other Factors

The City offered data indicating that the Consumer Price Index (CPI) for 2006 in the Minneapolis/St. Paul area was 1.6%. The Union's data included a broader geographical area, based on the Midwest urban index. This exhibit indicates that the CPI for this area was 2.1%. The net raise based on the City's proposal and CPI data is 1.9%. The net based on the Union's proposal and data is 1.4%. The proposals of both parties exceed both CPI figures provided.

Summary of Award

Effective January 1, 2007, there shall be a general wage increase of 3.5%.

July 23, 2007
St. Paul, Minnesota

David S. Paull, Arbitrator