

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION
)
 between)
)
 City of Orono, Minnesota)
) BMS Case No. 06-PN-0871
 -and-)
)
 Law Enforcement Labor)
 Services, Inc., Local)
 No. 40 (Patrol Unit)) November 21, 2006
))

APPEARANCES

For City of Orono, Minnesota

Cyrus Smythe, Consultant
Stephany Good, Chief of Police
Ronald J. Moore, City Administrator

For Law Enforcement Labor Services, Inc., Local No. 40

Dennis O. Kiesow, Business Agent
Robert W. Dirks, Business Agent
Scott W. Boris, Steward
David L. McNichols, Assistant Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local Union No. 40 (hereinafter referred to as the "Union" or "LELS") is the certified bargaining representative for all essential licensed employees hired by the City of Orono (hereinafter referred to as the "City" or "Employer") in the City Police Department in the classifications of Police Officer.

The Police Department consists of a Police Chief, 5 Sergeants, 17 Police Officers, a Community Service Officer, and a

clerical staff. This essential unit at impasse includes 17 Police Officers, consisting of Patrol Officers, Investigators, and School Resource Officers. The Sergeants are also represented by LELS in a separate supervisory bargaining unit (Local No. 168). All other City employees are non-union and non-represented.

The Parties are signatories to an expired Collective Bargaining Agreement which endured from January 1, 2004 through December 31, 2005.

The Parties entered into negotiations for a successor collective bargaining agreement effective January 1, 2006 through December 31, 2007. The Parties negotiated and mediated to no success. As a result, on May 22, 2006, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On June 2, 2006, the BMS determined that the following issues were certified for arbitration pursuant to M.S. 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Compensation - Amount of General Increase, Year 1 - Art. 18
2. Compensation - Amount of General Increase, Year 2 - Art. 18
3. Health Insurance - Amount of Employer Contribution Toward Health Insurance Premium, Year 1 - Art. 19

4. Health Insurance - Amount of Employer Contribution Toward Health Insurance Premium, Year 2, - Art. 19
5. Comp. Time - Amount of Accrued Comp. Time That May Be Carried Over Art. 13
6. Comp. Time - Pay Out Date For Accrued Comp. Time - Art. 13
7. - Comp. Time - Maximum Accrual of Comp. Time - Art. 13
8. Compensation - Premium Pay For Certain Assignments - NEW
9. Incentive Plan - Performance Incentive Pay Plan - NEW
10. Severance - Pay Out of Unused Sick Leave Upon Honorable Termination - Art. 14

The final positions of the Parties with respect to Issue #6 (Compensation Time Pay Out Date) were the same. The Parties agreed to the date of December 31st of each year for compensation time payout. The City dropped Issue #9 (Incentive Plan). As a result, Issue #6 and Issue #9 are no longer in dispute in this case.

The Parties selected Richard John Miller to be the sole arbitrator from a panel submitted by the BMS. A hearing in the matter convened on October 26, 2006, at 9:00 a.m. in the City Hall Council Chambers, 2750 Kelley Parkway, Orono, Minnesota. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. Pursuant to the statute and the agreement of the Parties, post hearing briefs were timely submitted by the Parties on November 9, 2006,

and received by the Arbitrator on November 11, 2006, after which the record was considered closed.

**ISSUE ONE: COMPENSATION - AMOUNT OF GENERAL
INCREASE, YEAR 1 - ART. 18**
**ISSUE TWO: COMPENSATION - AMOUNT OF GENERAL
INCREASE, YEAR 2 - ART. 18**

POSITION OF THE PARTIES

The Union is requesting the current 2005 wage schedule be increased by 5% effective January 1, 2006, and 5% for 2007, effective January 1, 2007.

The City is requesting the current 2005 wage schedule be increased by 3% effective January 1, 2006, and 3% for 2007, effective January 1, 2007.

AWARD

The current 2005 wage schedule be increased by 3% effective January 1, 2006, and 4.0% for 2007, effective January 1, 2007.

RATIONALE

There are four well-recognized criteria in interest arbitration for deciding the wage issue. They include the employer's ability to pay, internal comparable, external comparables and the changes in the cost-of-living ("CPI").

The City is a wealthy suburb located on the northern shore of Lake Minnetonka, about 15 miles west of the City of Minneapolis. The City occupies 40% of the shoreline and 33% of

the lake area of Lake Minnetonka, which generates a hefty tax base to generate abundant revenue for the Employer.

The additional wage cost of the Union's proposed increase of 5% each year for 17 officers is minimal; \$98,474.16 for the two year package (excluding roll-up costs). This is affordable to the City. The City has generated significant revenue and has curbed expenditures such that the City is one of five small cities in the nation that has received a "AAA", the highest possible rating from Moody's Investors Service. "Moody's justified the upgrade by saying Orono has "extremely high wealth levels, has kept debt low and handles its finances well, with lots of cash - about \$2.7 million - in reserve."

The City's wealth is verified by a report published by State Auditor Pat Anderson showing the City had an unreserved fund balance of 128% of their total annual expenditures on December 31, 2004. The financial statements show increases in wealth with the General Fund balance increasing from \$1.6 million on December 31, 2001 to \$2.8 million on December 31, 2005. The total cash and investments owned by the City are in excess of 16.4 million dollars.

This wealth has occurred because the City's revenues have exceeded expenditures since 2002 resulting in increases in the unreserved/undesignated surplus funds. The City clearly has the

ability to pay the Union's wage request and, of course, the Arbitrator's award of 7% (3% for 2006 and 4% for 2007), which is 3% less than the Union's request for 10% (5% each year in 2006 and 2007).

The Minnesota's Local Government Pay Equity Act ("LGPEA") makes clear that internal equity is an important wage consideration. "In interest arbitration involving a class other than a balanced class...the arbitrator shall consider the equitable compensation relationship standards established by this section...together with other standards appropriate to interest arbitration." Minn. Stat. § 471.992, subd. 2 (2004). The legislature directed the Department of Employee Relations ("DOER") with the responsibility of ensuring compliance with the LGPEA. Minn. Stat. § 471.9981 (2004).

To ensure compliance with the LGPEA, the legislature requires jurisdictions to file reports every five years. DOER has developed computer software to statistically measure equitable relationships and determine if a given jurisdiction is in compliance. DOER, Guide to Understanding Pay Equity Compliance and Computer Reports, at page 1 (2005). Based upon the results of the computer analysis of each jurisdiction's report, DOER makes the determination whether or not the jurisdiction is in compliance with the LGPEA.

The City's latest internal equity analysis filed with DOER shows full compliance with the LGPEA. The Union also has the same DOER software. A computer analysis of the Union's requested wage increases for 2006 and 2007 shows the increases will not affect the City's compliance with the LGPEA. This was not refuted the City.

Internal comparability goes a step beyond LGPEA compliance, once compliance is established, as is the case here. The evidence discloses that sometimes the "dog has wagged the tail" and sometimes the "tail has wagged the dog". In other words, sometimes the Union has settled first and the exact wage percent increase has been applied to non-union wages. In other times, non-union wages were established first by unilateral imposition by the City and the same percentage increases were agreed to by the Union. In fact, this occurred in the expired contract, where the Union agreed during the onset of that interest arbitration to accept the City's offer of 3% each for 2004 and 2005, as had already been provided by the City to non-union employees. In any event, there appears to be a long established past practice of Police Officers receiving the same percentage wage increases as provided by the City to the other City employees.

This long-standing bargaining practice has taken a new twist for this round of bargaining. For many years, the Licensed

Police Officer Unit was the only represented group of City employees. Recently, the Sergeants have organized into a separate supervisory bargaining unit represented by LELS. In previous arrangements, the Sergeant's wage was based on a percentage over top patrol wages after the Patrol Unit had negotiated a contract or agreed-upon the same percentage given to non-union employees. The current Sergeant's contract is the first agreement in which the Sergeants will negotiate a wage rate. Unfortunately, there is no settlement established for the Sergeants Unit which would have assisted the Arbitrator in resolving the wage issue for the Patrol Unit. The addition of the Sergeants Unit, however, should stop the "whipsawing" effect of non-union employees and the Patrol Unit.

The 2006 year-end interest arbitration has resulted in the City establishing a 3% wage increase for the non-union employees for 2006. Based upon the established practice of the Patrol Unit accepting the non-union wage percentage increase and the fact that the Sergeants Unit is not settled, the Arbitrator awarded the Patrol Unit a 3% wage increase for 2006.

The City has budgeted a 3% wage increase for 2007 for non-union employees but this amount has not been set by City Council resolution. Thus, there is no established internal wage pattern for any non-union or unionized group for 2007. When this occurs,

Arbitrators turn to external comparable groups used to establish market comparisons.

The City has a population of approximately 7,728. As a result, the City has always been classified as being in Stanton Group VII (cities with a population of less than 10,000). The Union proposes to change the long established comparability group by comparing Orono with larger cities in Stanton Group VI (cities with population between 10,000-25,000). The Union claims that Orono should be reclassified to Stanton Group VI because Orono provides police services to three additional cities sharing the cost (Long lake, Spring Park and Minnetonka Beach). If the Arbitrator accepts the Union's argument, Orono and the other cities that Orono provides police service would total approximately 11,809 people. This total population would place Orono in Stanton Group VI.

Where a "Joint Powers Agreement" ("JPA") has been established by cities and counties, under enabling State legislation establishing a new "employer" for a job classification(s) such as utility workers, dispatchers, or police officers, Stanton measures the population served by such formed JPA "employer" and classifies the "employer" using the same definitions as other employers for the job classification(s). Such classification by Stanton for the JPA

does not affect the definition of the individual city or county employers making up the JPA for its other job classifications not affected by the JPA.

South Lake Minnetonka which provides services to four cities with a combined population of over 10,000 people and the Centennial Lakes Police Department which provides services to three cities with over a total of 10,000 people are both classified by Stanton as Group VI cities based upon apparent JPAs. This is unlike Orono. Orono has not been involved in any JPA for police or any services and, therefore, under State law remains a single city with a population of approximately 7,728. This population officially classifies the City of Orono as a Stanton Group VII city for all of its job classifications.

The top step monthly salary for Orono Police Officers in 2005 was \$4,566 (rounded). The 2005 average salary for the Stanton Group VII cities was \$4,504. Thus, Orono was \$62 above the average in 2005 of the comparable cities.

The settlement data produced by the Union for the comparable cities shows that the 2006 average salary increased to \$4,682 or 4.01% (for all of the comparable Stanton VII cities) and for 2007 increased to an average of \$4,907 or 3.42% (for 12 of the 19 settled cities in Stanton Group VII). The settlement data produced by the City for the comparable cities shows that the

2006 average salary increased to \$4,730 or 3.42% (for 14 of the 19 settled cities in Stanton Group VII) and for 2007 increased to an average of \$4,791 or 4% (for 3 of the 19 settled cities in Stanton Group VII).

The Union settlement data is more reliable since it contains more settlements for both 2006 and 2007. Consequently, the awarded 7% wage increase for 2006 and 2007 for Police Officers brings them to \$4,886 (1.07% x \$4,566) or approximately \$21 behind the average of the comparable cities. Although Orono is behind the average of these cities for 2007 rather than ahead of the average, as was the case in 2005, they are nearly at the average. Moreover, the City's longevity pay (ranging from 3% after four years to 9% after 16 years) would maintain the City's Police Officers in a more than competitive position even though they are not at the average of the comparable cities for 2007.

The figures issued by the Department of Labor show the Wage Earners for the Midwest Region had a CPI increase of 4.0% for 2005 and 3.5% during the first half of 2006. The CPI for Wage Earners in the Midwest Region (Cities under 50,000) increased 5.1% for 2005 and 4.2% during the first half of 2006. The awarded wage increase of 7% for 2006 and 2007 ensures that the Police Officers wages keep some relative pace with increases in the CPI.

**ISSUE THREE: HEALTH INSURANCE - AMOUNT
OF EMPLOYER CONTRIBUTION TOWARD HEALTH
INSURANCE PREMIUM, YEAR 1 - ART. 19**

**ISSUE FOUR: HEALTH INSURANCE - AMOUNT
OF EMPLOYER CONTRIBUTION TOWARD HEALTH
INSURANCE PREMIUM, YEAR 2 - ART. 19**

POSITION OF THE PARTIES

The Union proposes to increase the single Employer insurance contribution by \$20.00, employee plus one or dependents by \$50.00, and family by \$100 per month for 2006. The request for 2007 increases the Employer's contribution for single insurance by \$20.00, employee plus one or dependents by \$60.00 and family by \$120 per month.

The City's position is to increase the Employer contribution by \$50.00 per month from \$565.00 to \$615.00 for 2006 and by \$60.00 to \$675.00 per month in 2007. All employees will receive the same amount of increase.

AWARD

The City's position is sustained.

RATIONALE

The record establishes that 14 of the 17 bargaining unit employees elected to receive Employer paid health insurance. Nine of the 14 employees receive single coverage, 3 receive single plus spouse or children and only 2 receive family coverage.

The cost of City's offer for 2006 is \$700 per month (14 employees receiving \$50 per month). The Union's offer for 2006 would result in a cost of \$530 per month (9 single at \$20 per month, 3 single plus at \$50 or \$150 per month, and 2 family at \$100 or \$200 per month).

The cost of City's offer for 2007 is \$840 per month (14 employees receiving \$60 per month). The Union's offer for 2007 would result in a cost of \$600 per month (9 single at \$20 per month, 3 single plus at \$60 or \$180 per month, and 2 family at \$120 or \$240 per month).

The Union's request to give employees taking single insurance less and family insurance more would have actually cost the City less per month and provide an employee taking family coverage badly needed relief from high premium costs. The members taking single cover were willing to sacrifice some of the contribution they receive to provide relief to the employees taking family coverage for the next two years. The need for the Union's request is more urgent as a result of the City changing the Medica Low insurance coverage to an HRA type plan which could cause an employee on this plan to assume a greater exposure out of pocket expenses that could be as high as \$1,602 per year.

While the above reasons proffered by the Union in support of their position are noteworthy, they are superseded by the fact

that the City has provided the same level of Employer contribution for health insurance coverages for all City employees since the early 1970s both by labor agreements and implementation. The City has never agreed to different health insurance coverages or Employer contributions for different employees or employee groups during those years. This overwhelming practice was not refuted by the Union. In fact, most active interest arbitrators have adopted the philosophy that all employees of a political jurisdiction should receive the same employer contribution for health insurance.

Further, the Union has attempted twice to gain a decision by interest arbitrators (Arbitrators Joseph L. Daly, November 5, 1984, and Richard R. Anderson, November 23, 2004) to provide for its bargaining unit members a higher level of coverage and City contribution than the City had determined to provide for all of its employees. The arbitrators ruled in favor of the City by adopting the insurance coverages and the Employer contribution given to all City employees, with the exception of Arbitrator Anderson who awarded in the second year (2005) the Employer contribution based on external markets, since at the time of the arbitration, the City had not established a contribution rate for 2005 for the other City employees. However, in this case the City contribution for health insurance has been officially

established and adopted by the City for 2006 and 2007 for the City's health insurance cafeteria plans. Thus, the circumstances existing in 2005 do not exist in this case.

The City's contribution of \$615.00 per month for 2006 and \$675.00 per month for 2007 will be paid to all employees of the City whether they take single or dependent coverage (no employees have asked to opt-out of insurance coverage). Employees who do not take dependent coverage will receive in 2006 a cash amount to be utilized by the employee in the manner the employee chooses dependent on the insurance option chosen. Thus, an employee not taking dependent coverage (the majority of bargaining unit employees) would receive a cash allowance in 2006 of:

\$195.28/mo. if employee chooses "High" coverage
\$213.59/mo. if employee chooses "Elect" coverage
\$338.75/mo. if employee chooses "HD(MIC2500) coverage

Employees not taking dependent coverage who decide to take the above amount monthly in cash will receive a higher monthly income and accordingly receive higher City pension contributions and benefits provided by law and/or contract.

The Union asks for City contributions and coverages representing a "best of all possible worlds" approach. The Union wants a plan which would cause the City to pay significantly more for health insurance than any of the cities in any Stanton Group VII would be liable to pay. The average is \$719 for 2006 and

\$706 for 2007 (only three reported settlement for 2007). Thus, based on external comparisons, the Union has not sustained its burden.

ISSUE FIVE: COMP. TIME - AMOUNT OF ACCRUED COMP. TIME THAT MAY BE CARRIED OVER - ART. 13

ISSUE SEVEN: COMP. TIME - MAXIMUM ACCRUAL OF COMP. TIME - ART. 13

POSITION OF THE PARTIES

The Union is requesting the compensatory time maximum accrual cap be increased from the current cap of 40 hours to 60 hours and the maximum carryover be increased from the current amount of 10 hours to 20 hours. The City's proposes to maintain the current maximum accrual cap of 40 hours and maximum carryover of 10 hours.

AWARD

The Employer's position is sustained.

RATIONALE

The Union presented undisputed testimony and evidence showing the current language in Article 13 is not being followed. Officer McNichols testified that numerous Officers have accrued in excess of the current 40 hour cap during the year. A list of Officers and Sergeants was also presented which documents compensatory time carried into the current year well in excess of the 10 hours carryover limit. Officer McNichols testified that

during his 14 years with the Police Department he was unaware of the City ever buying down the compensatory time banks prior to year end.

While the City did not refute the testimony of Office McNichols, there was no evidence, that by the City not adhering to the current language in Article 13, that any Police officer was harmed whatsoever. Moreover, there is no compelling evidence that even if the Union's requested changes had been awarded they would make it easier for the Police Department to comply with Article 13. To the contrary, the Union's buy down requirement would cause a greater rush by Police Officers than now for use by the end of year.

The solution is not the increases proposed by the Union but better planning ahead by the Police Officers to use their accrued compensatory time in cooperation with the Police Department administration.

The proposed increases sought by the Union could also hinder taking time off from other Police Officer who may have difficulty scheduling time off.

Finally, the majority of the external comparables in Stanton Group VII support the City's position. There are very few cities that list the compensatory time maximum accrual cap and/or list the maximum carryover.

**ISSUE EIGHT: COMPENSATION - PREMIUM PAY
FOR CERTAIN ASSIGNMENTS - NEW**

POSITION OF THE PARTIES

The Union proposes to add a monthly differential or premium pay for the assignments of Investigator, School Resource Officer and Drug Task Force Officer effective January 1, 2006. The Union requests an amount equal to the average pay for the positions in Stanton Group VI. The average premium pay for 2005 is \$205.98 per month for Investigators and \$176.00 per month for School Resource Officer.

As part of the Union's position, in a Request for Council Action (dated December 10, 2004), the City passed a resolution accepting the recommended budget, which included increased expenditures for the addition of a police investigator and narcotics investigator. Apparently, the City recognized both positions as Investigator positions, therefore the Drug Task Force Officer would be eligible for the same Investigator pay differential. The City previously authorized the positions and has included them in the 2005 budget. The additional cost is not an issue.

The City opposes any premium pay for the assignments of Investigator, School Resource Officer and Drug Task Force Officer.

AWARD

The Employer's position is sustained.

RATIONALE

The evidence establishes that a majority of the Stanton Group VII cities do not provide for the premium pay sought by the Union with respect to the assignments of Investigator, School Resource Officer and Drug Task Force Officer. Thirteen of the 20 comparable Stanton group VII cities do not provide for premium pay for the assignment of Investigator. There are only two of 20 Stanton Group VII cities that provide pay for the assignment of School Resource Officer. There was no data showing any pay for the assignment of Drug Task Force Officer among the comparable cities. As a result, the Union has not met its burden of proof on this issue.

**ISSUE TEN: SEVERANCE - PAY OUT OF UNUSED SICK
LEAVE UPON HONORABLE TERMINATION - ART. 14**

POSITION OF THE PARTIES

The City's position is no change from the current language in Article XXIV which reads as follows:

Each employee with 3 years or more of service with the EMPLOYER will receive, upon honorable termination of employment, one-third (1/3) of the accumulated sick leave as severance pay.

The Union requests the addition of following language to Article XXIV as follows:

An employee who provides a 30 day notice of termination with 8 years or more of service with the EMPLOYER will receive two-third of the accumulated sick leave as severance pay. These funds shall be deposited in a designated Post Employment Health Care Savings Plan.

AWARD

Effective January 1, 2007, Article XXIV, Severance Pay, shall read as follows:

Each employee with 3 years or more of service with the EMPLOYER will receive, upon honorable termination of employment, one-third (1/3) of the accumulated sick leave as severance pay. Each employee with 12 years or more of service with the EMPLOYER will receive, upon honorable termination of employment, one-half (1/2) of the accumulated sick leave as severance pay. These funds shall be deposited in a designated Post Employment Health Care Savings Plan.

RATIONALE

The City currently provides under Article XXIV one-third of an employee's accrued sick leave as severance pay, if the employee has three years or more of service, upon honorable termination of the employee's employment. This is significantly below what other comparable cities provide in Stanton Group VII. In those cities, 12 of 19 are paying 50% or more of unused sick leave as severance pay. Most of the cities, however, have a waiting period longer than three years for severance payout of 50% or more. The 12 year waiting period is within the norm of those cities that provide a severance payout of 50% or more.

The existing severance pay benefit contained in Article XXIV is derived from the benefit level available for all of the City employees. The City argues that this benefit should be maintained. While it is true that the majority of benefits should be internally maintained among all of the jurisdiction's employees a few exceptions to that rule exist. For example, employment as an licensed Peace Officer is unique and requires a different severance benefit than other non-essential employees. The legislature recognized the uniqueness of law enforcement by creating a separate pension system for Police officers. A Police Officer can retire with full benefits at age 55, much sooner than other public employees.

Further, the ever increasing cost of health insurance after retirement until the employee has reached Medicare availability creates an urgent need for an increase in severance pay for Police Officers. The award guarantees that the severance pay payout is used for that purpose. The award provides that the severance payout be deposited only in a designated Post Employment Health Care Savings Plan in order for the employee to offset the cost of post employment health insurance.

Finally, Arbitrator Andrea Kircher, who is a very active interest arbitrator, awarded an increase in severance pay because, "[T]he City is out of step with comparable jurisdictions

regarding this benefit, so it is reasonable to award an increase to bring the City near the average point of comparable cities for severance pay." Law Enforcement Labor Services, Inc. v. City of New Brighton, BMS 01-PN-674 (2001). The City's current severance payout is obviously "out of step" when compared to the external market as noted previously.

As always, the Union and Employer representatives are to be complimented on their professional and courteous conduct at the hearing, and the comprehensiveness of their oral and written presentations.

Richard John Miller

Dated November 21, 2006, at Maple Grove, Minnesota.