

MINNESOTA BUREAU OF MEDIATION SERVICES

ARBITRATION AWARD

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In the Matter of the Arbitration)
)
Between)
)
LAW ENFORCEMENT LABOR SERVICES) File 06-PN-0946
)
and) JOHN REMINGTON
) ARBITRATOR
COUNTY OF ST. LOUIS, MINNESOTA)
)
)
_____)

THE PROCEEDINGS

The above captioned parties, having been unable to resolve an impasse arising out of the inability to agree upon the terms and conditions of a new collective bargaining agreement, selected the undersigned Arbitrator John Remington, pursuant to Section 179A.16 of the Public Employment Relations Act and through the procedures of the Minnesota Bureau of Mediation Services, to hear and decide the matter in a final and binding determination.

Accordingly, a hearing was held on January 10, 2008 in Duluth, Minnesota, at which time both parties were represented and fully heard. The parties presented oral testimony and documentary evidence. No stenographic transcript of the proceeding was taken and the parties were requested to file post hearing briefs concerning whether or not the issue of wage

compression was properly before the Arbitrator. These briefs were subsequently received by the Arbitrator on January 21, 2008.

The following appearances were entered:

FOR THE EMPLOYER:

Steven C. Fecker Attorney at Law

Ross Litman Sheriff

FOR THE UNION:

Len McFarland Business Agent

Dave Lovaas President, Local #288

THE ISSUES

At the time the parties reached an impasse in collective bargaining, they identified the following issues to the Minnesota Bureau of Mediation Services for resolution through interest arbitration: (1) wages for 2006; (2) wages for 2007; (3) wages/ on-call compensation; (4) definition of “child” within the meaning of the contractual sick leave policy; (5) health insurance premium contribution and a new health insurance option; and (6) job experience credit as applied to entry level wages. Prior to the hearing the parties resolved and withdrew from arbitration the health insurance issues (number 5 above) and the job experience/ entry level wage issue (number 6 above).

During the hearing a dispute arose between the parties as to whether or not the issue of wage compression in connection with wages for 2006 and 2007 had been properly certified for arbitration. It is the contention of the Employer that wage compression was not among the issues submitted to the Bureau of Mediation Services (BMS) by the Union as part of its final position. Accordingly, the Employer argues that the wage compression issue was not certified by BMS

and that the Arbitrator therefore lacks jurisdiction to hear this issue. It is the contention of the LELS that it did, in fact, file its final position with BMS; that wage compression was part of its proposal to the Employer; that wage compression was discussed throughout negotiations and subsequent mediation sessions; and that the Union properly submitted a final position on November 16, 2006 that included proposed changes to Article 5- Wages for the years 2006 and 2007. The Union therefore maintains that the wage issue, including the proposed step compression, was certified by BMS and that the Arbitrator has jurisdiction to hear it.

There can be little doubt that wage compression has been an integral part of the Union's wage proposal to the County since at least December of 2005. Indeed, it was previously submitted to arbitration by the parties in 2000 before Arbitrator Nancy Powers. The Union's notice to the Employer of December 20, 2005 lists, under Article 5-Wages, the following wage issues:

- Exhibit A 2006 5% and Exhibit B 2007 5%
- Wage compression/ One year steps
- Increase on-call compensation
- Lateral Entry- recent hires
- K9 Language/ compensation

The list includes eight other issues unrelated to wage rates. However, the above final position letter submitted by the Union to BMS on November 16, 2006 lists the following issues:

- Wages 2006, Article 5, Appendix A
- Wages 2007, Article 5, Appendix B
- Wages, Starting Wage, Article 5, Appendix A and B
- On-call pay compensation and hours assigned- Article 5, Section 2
- Definition of Child- Article 16- Sick Leave
- Health Plan- Employer Contribution- Article 18

It is evident that wage/ step compression is not specifically identified in the November 16 final position. Based on a comparison of the above lists of issues, it was therefore reasonable for the Employer to conclude that the Union had dropped wage compression/ one year steps; lateral

entry-recent hires; and K9 language/ compensation from its list of issues to be certified to arbitration. This conclusion was reinforced by the fact that the matter of step compression had been certified to arbitration separately in the parties' 2000-2001 interest arbitration. The Employer therefore objects to consideration of the compression issue primarily because it was unprepared to oppose or rebut Union contentions related to wage/ step compression at the interest arbitration hearing.

Unfortunately, the Union's proposal on wages as presented at the instant hearing incorporates wage/step compression within its 5% per year requested increase for 2006 and 2007, and it is impossible to properly evaluate the Union's position on wages without at least considering the compression proposal. Accordingly, the Arbitrator finds that while he has jurisdiction to fully evaluate and consider the Union's position on wages, he is constrained to award an across the board wage settlement, in part because of the Union's failure to clearly request certification of the wage/ step compression issue and for other reasons set forth below.

BACKGROUND

St. Louis County, Minnesota (hereinafter the "EMPLOYER" or "COUNTY") is geographically the largest county in the State encompassing over 6800 square miles with a population of over 200,000. The County is a public employer within the meaning of Minnesota Statutes §179A. Law Enforcement Labor Service (LELS) Local No.288 (hereinafter the "UNION") is the duly certified exclusive collective bargaining representative for deputy sheriffs, investigators and sergeants employed in the County's Sheriff's Department. The parties were unable to agree on the terms of a new collective bargaining agreement during 2006 and, following mediation, submitted their disputes to the Bureau of Mediation Services for interest

arbitration. The final position of the Employer was submitted to BMS on November 20, 2006. A final copy of its revised positions was sent to the Union on August 24, 2007. The final position of the Union was submitted to BMS on November 16, 2006. These positions are properly before the Arbitrator for final and binding determination.

DISCUSSION, OPINION AND AWARD

ISSUES #1 and #2-Wages for 2006 and 2007

The Union seeks a five percent (5%) general increase in wages for 2006 and a comparable increase for 2007. As noted above, the proposed 5% increases are included within its wage compression proposal. The Employer proposes an across the board wage increase of 2% for each year which is consistent with the increases negotiated with the County's other employee unions. There is no pay equity issue here. The County is currently in compliance with the Pay Equity Act and neither of the above proposals would take them out of pay equity.

Internal Comparisons

Probably the single most important factor in wage determination through interest arbitration is an internal market comparison, particularly a comparison with other unionized employee groups. Because of the importance of internal consistency in the administration of pay and benefit plans, particularly in larger jurisdictions, internal comparisons are generally afforded greater weight than external comparisons. The Employer notes that all of its other bargaining units settled for 2% annual increases in 2006-2007 and points to a pattern of relatively comparable settlements between the Deputies' unions and other bargaining units over a twenty year period. There were, however, significant deviations from this pattern in 1997 and 1999 pursuant to interest arbitration awards.

External Comparisons

Selection of the comparison groups for wage determination through interest arbitration is rarely agreed upon by the parties. Here the parties concede that the neighboring Arrowhead counties (EDR-3= Aitkin, Carlton, Cook, Itasca, Koochiching and Lake Counties) are an appropriate comparison group although the Union also proposes comparison with Group 2 (the old Stanton 4 Group) Counties (Anoka, Carver, Dakota, Olmstead, Scott and Washington). St. Louis County Deputy salaries do not compare favorably with those in these latter counties. While these “Group 2” counties are somewhat comparable to St. Louis in terms of population and crime rate, they are part of a very different labor market which includes the Twin Cities. Accordingly, the Arbitrator does not find them appropriate for comparison purposes here. The problem with comparison with the other Arrowhead Counties is that St. Louis is significantly larger, both in terms of area and population, than the other counties in the group. Despite these limitations, it is the only appropriate comparison group of counties in the state.¹

Surprisingly, St. Louis County Deputies’ salaries do not compare well with those in other Arrowhead Counties. This is particularly true in terms of top wage rates (6.1% below average based on the Employer’s 2% wage proposal). Indeed, based on the Employer’s 2% offer, wages will be only slightly above, and sometimes below, the Arrowhead average, with the exception of years two and three, for the first fifteen (15) years of a Deputy’s employment in St. Louis County.

¹ The Union also proposed comparison with a number of cities within St. Louis County. However, the Union did not present evidence or argument sufficient to persuade the Arbitrator that such comparisons are appropriate. Further, an external wage study commissioned by the County is near completion but the Union was not provided with data from this study although preliminary data was apparently available at the time of the hearing.

Ability to Pay

There is little doubt that the Employer has the ability to pay the Union's requested wage increase. Based on the documentation presented by the Union, it appears that the County is financially healthy and could accommodate the Union's request. However, ability to pay is only rarely controlling in interest arbitration and should only be determinative where the Union can establish that an increase is also justified by internal and/or external comparisons.

Cost of Living

Consumer price index data presented by the Union appear to justify an increase greater than that proposed by the Employer. Both the CPI-U and the CPI-W increased 3.2% from 2005 to 2006. The CPI-U increased 2.8% from 2006 to 2007 while the CPI-W increased 2.9% during the same period. While it is true that these national data tend to slightly overstate inflation in the Midwest generally, and Northern Minnesota in particular, the regional data still show an inflationary increase of over 2% for both 2006 and 2007.

Overall, taking internal and external comparisons, the ability of the Employer to pay, and the trend in inflation into consideration, it is apparent that while the Union's wage proposal is somewhat excessive, it is also apparent that the Employer's proposal is less than adequate. This is particularly problematic for deputies with four to fifteen years of service. Presumably, these are peace officers who have been fully trained and have sufficient experience to make them highly productive, an employee group that the Employer is presumably desirous of retaining. However, due to the comparatively poor pay and relatively low seniority of officers in this category, they would appear to be the most likely to be attracted to jobs in other jurisdictions based on pay and benefit considerations. It cannot be denied that the wage/ step compression approach proposed by the Union is one way of resolving this problem.

It is evident from the testimony of Union President Lovaas that the Union has identified problems with the current salary schedule and has proposed a creative approach to resolving them. However, such a substantial change in the existing schedule should be incorporated through collective bargaining and not imposed through interest arbitration. For this reason and for those hereinabove set forth, the Arbitrator declines to grant the Union's requested wage increase and instead will award an across the board increase as proposed by the Employer, as follows:

AWARD

- 1) bargaining unit employees shall receive a two and one half percent (2.5%) across the board wage increase retroactive to the 2006 payroll year;
- 2) bargaining unit employees shall receive an additional two and one half percent (2.5%) across the board wage increase retroactive to the 2007 payroll year.

ISSUE #3: WAGES/ ON-CALL COMPENSATION

The Union requests that the current compensation for on-call time be increased from its current rate of \$2.00 per hour to \$3.25/ hour for regular time and \$5.25/ hour for holiday time. The Union also proposes some language changes to Article 5 that would impact how on-call pay is applied. The Employer proposes no change in the current agreement. The Union argues that County MIS Department employees and employees in the Communications Department, employees represented by a different union, currently receive \$3.25/ hour for "stand-by" duty, and that its proposal would only cost an additional \$16,625/ year. The Employer contends that on-call status for deputies is different than the stand-by status for communications employees and notes that only three other counties in the Arrowhead area even provide on-call pay; Itasca and Lake Counties pay \$2.00/ hour while Cook County pays \$3.00/hour.

The Arbitrator here finds that the Union has not put forth evidence and argument sufficient to justify the change in on-call pay that they have proposed. It is unclear whether or not the current system has caused a hardship or that the internal comparison suggested by the Union is even appropriate. There is certainly no compelling argument to be drawn from the external comparison with other Arrowhead counties. The Employer's position must therefore be sustained.

AWARD

There shall be no change in the on-call compensation provision found in Article V of the parties' collective agreement for 2006-2007.

ISSUE #4-DEFINITION OF MINOR CHILD WITHIN THE MEANING OF ARTICLE 16-SICK LEAVE

The Union proposes revising Article 16, Section 4 by replacing "his/ her" in the first sentence of Section 4 with "their" and by replacing the following paragraph beginning "Sick leave may be paid for absence due to an illness of the employee's child with:²

Sick leave may be paid, upon approval of the supervisory staff, for absence due to illness in the immediate family of the employee where attendance of the employee is necessary. Immediate family for this purpose shall be defined as parents, stepparents, spouse, children, stepchildren or wards of the employee.

The Employer opposes any change in the language. As Article 30, Savings Clause, clearly reveals, all provisions of the collective agreement are subject to the laws of the United States and the State of Minnesota. The change proposed by the Union will comply with the provisions of the Federal Family Medical Leave Act (FMLA) and will not be incompatible with state law. The Employer notes that current state statutes define "child" as set forth in the current collective agreement. However, the language of the FMLA is preemptive. Accordingly, the language

² "Child" under the current agreement "means an individual under eighteen (18) years of age or an individual under age twenty (20) who is still attending secondary school."

proposed by the Union must be favored here and the Employer raises no substantive objection to the change. Accordingly, the Arbitrator is compelled to find that the language proposed by the Union should be adopted.

AWARD

The parties shall adopt the changes to Article 16 proposed by the Union noted above.

The Arbitrator has made a detailed review and analysis of the testimony and documentary evidence offered by the parties in support of their respective positions, and he has carefully read and considered the arguments advanced by the parties in their post-hearing briefs. Having considered the above review and analysis, together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that the above awards are sufficient to resolve the impasse between the parties.

John Remington,
Arbitrator

January 30, 2008

St. Paul, MN