IN THE MATTER OF ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc. Local No. 202, Licensed Supervisors "Union" and County of Sherburne, Sheriff's Department, Corrections Unit "County"	INTEREST ARBITRATION BMS Case No. 14- PN- 0549 Date Notified of selection as neutral Arbitrator: 7/18/14 Date of Hearing: 09/23/14 Place of Hearing: Elk River, MN Record Closed: 10/10/14 Date Decision Awarded: 11/07/14

APPEARANCES

For the Union:	For the County:
Dennis Kiesow, Business Agent, LELS	Gregory J. Wiley, General Counsel, SCSO
Andy Masterman, Business Agent, LELS	Steve H. Taylor, County Administrator
Denny Arons, LELS	Roxanne Chmielewski, Human Resources Director
Sgt. Tim Jeanetta, Union, SCSO	Felix Schmiesing, County Commissioner

JURISDICTION

Authority and Procedure. The above-referenced Interest Arbitration come on for hearing on September 23, 2014 at 9:00 am. at the Sherburne County Government Center in Elk River, Minnesota. At the hearing, both parties were given a full opportunity to present their evidence and argument they deemed relevant in support of their respective positions on each issue at impasse. Witnesses testified and exhibits were received and subject to cross-examination. The parties briefs were timely file on October 10, 2014, at which time the record was closed. and the matter was taken under advisement.

In a letter dated April 25, 2014, pursuant to Minn. Stat . § 179A. 16, subd. 2, and and Minn. R. 5510.2930, the Commissioner of Bureau of Mediation Services advised the undersigned that the parties in this case had reached a negotiated impasse. Further, the Commissioner certified the following seven

issues to arbitration:

1. Wages - Wage Amount 2014 - Appendix A
2. Wages – Wage Amount 2015 - Appendix A
3. Paid time Off - Amount of Longevity PTO - Art. 19, Sec. 13
4. Injury On Duty - Amount of IOD Supplement - Article 20
5. Insurance - Allocation Employer Contribution to Cafeteria Plan - Art. 11, Sec. 2
6. HDHP and VEBA Participation for Cafeteria Plan - Art. 11, Sec. 2
7. Insurance - Benefit Advisory Committee To Address Plan Design Issues Related to ACA - Art. 11, New

Statement of Issues

Sherburne County and Law Enforcement Labor Services, Inc. ("LELS") (the "Parties") submitted positions on seven issues that were certified for interest arbitration, including: (1 & 2) the appropriate wage increase for this bargaining unit for 2014 and 2015; (3) whether the arbitrator should change the parties bargained for language in the collective bargaining agreement concerning the current paid time off longevity merit benefit; (4) whether the arbitrator should change the parties bargained for language in the collective bargaining agreement concerning the amount of paid time off for an employee's injury on duty; (5) the appropriate amount of the employer's contribution to the employee's cafeteria benefits plan; and (6 & 7) whether the language in the current collective bargaining agreement should be modified to reflect the requirements of the Affordable Care Act.

Background on Sherburne County and this bargaining Unit.

Demographic Data. This Interest Arbitration involves the Licensed Supervisors Unit, represented by LELS, Local No. 202. The unit consists of 18 employees, including: one Transport Court Security Sergeant[1], seven Investigative Sergeants, six Patrol Sergeants, two Patrol Captains, one Investigative Captain, and one Operations Commander. The group consists of 17 male employees and one female employee, and, as such, it is not a "balanced class," under the Minnesota Pay Equity Laws, Minn. Stat. 471.991 et. seq. This is the first interest arbitration in Sherburne County in over seven years.

Sherburne County was established in 1856 in central Minnesota just 30 miles northwest of Minneapolis and St. Paul. The County encompasses an area of 431 square miles and contains 7 cities and 10 townships with a population of 90,158 in 2013. It currently has 620 employees, 248 of which

are non-union (40%) and 372 employees (60%) that belong to one of 10 union bargaining units.

Principles and Criteria for Determination of Interest Arbitration

The two primary bases for decision by an arbitrator in any interest arbitration are:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table or, in the case of essential employees, to settle a strike. Although this determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process by provoking yet more interest arbitration. The role of an interest arbitrator in cases dealing with essential employees, including licensed police officers who are forbidden to strike, is to fashion awards as the parties themselves would have negotiated to end a strike.[2]

(2) Seeking to avoid award that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.[1]

Arbitrators consider the employer's ability to pay, relevant internal comparisons, relevant external comparisons and, other economic or non-economic considerations such as the cost of living, the general state or national, **s**tate and local economies, problems of attraction or retention and significant changes in underlying job duties. Absent compelling reasons to do so, arbitrators avoid awards that significantly alter the bargaining unit's standing either internally or externally.

Since the adoption of the Minnesota Pay Equity Act. Minn. Stats. 471.991 – 471.999, most Minnesota interest arbitrators considered the principal, but not exclusive, factor relied upon in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with settlements negotiated with respect to other bargaining unit in the same jurisdiction.

Generally, an arbitrator should not alter a longstanding contractual arrangement in the absence of a compelling reason to do so, and will place the burden on the party proposing a change to demonstrate the need for it by clear and convincing evidence or a quid pro quo.

THE PARTIES' FINAL POSITIONS

County's Positions

The County requested the following increases for all classifications:

2" *Law Enforcement Labor Services v. Cottonwood County, BMS 01-PN-1423 (2002)(Miller, Arb.).*

1 *Minnesota Teamsters Public and Law "enforcement employees Union Local 320 and Carver County,* BMS Case No. 12-PN-0380 (Ver Ploeg 2012) at 3) (Vol. III, Ex. 3) (Awarding county position on wages, noting "[t]his has been premised upon the understanding that the County must be financially responsible and its expenditures must be sustainable.")

Issue # 1. Wages - Wages Amount 2014 - Appendix A - 1

Effective January 1, 2014 employees shall receive a two percent [2.0%] general increase.

Issue # 2. Wages - Wages Amount 2015 - Appendix A - 1

Effective January 1, 2015 employees shall receive a two percent [2.0%] general increase for all classifications.

Union's Positions

The Union requests the following increases for all Classifications:

1. Wages - Wages Amount 2014 - Appendix A

Effective January 1, 2014 employees shall receive a three percent [3.0%] general increase.

Effective July 1, 2014, employees shall receive a one percent [1.0%] market adjustment.

2. Wages - Wages Amount 2015 - Appendix A

Effective January 1, 2015 employees shall receive a three percent [3.0%] general increase.

Union Arguments. Affordability Data. The Union contends that the County has the ability to pay the requested wage increases for 2014 and 2015 based upon the 2012 and 2013 Comprehensive Annual Financial Reports (CAFR), the Unrestricted Government Fund Balance, Pay Equity, Internal Comparables, Economic Factors/Cost of Living, cash and investments on December 31, 2013 and an Enterprise fund. The Union points out that the additional wage cost of the Union's proposed increase for 2014 and 2015 is a minimal $65,969.34 more than the County offer of a 2% general wage increase each year.

In addition, The Union argues that the County's ability to pay is verified by both the 2012 and 2013 Comprehensive Annual Financial Reports (CAFR). At the end of 2012, the unrestricted governmental fund balance was over $56.4M or 63.56% of their operating expenses. The 2013 CAFR reported an unrestricted fund balance of over $55.4M or 62.25% of their operating expenses. After the County has spent down the general fund balance slightly from 2012 to 2013, they still exceed the recommended fund balance of 35 to 50 percent of the operating budget recommended by the State Auditor.

The Union contends the most recent financial records show the County as financially sound with a general fund balance in excess of $23.6 million and $15.5 million in undesignated discretionary funds. The County had in excess of $102.8 million in cash and investments on

December 31, 2013.

In additional, the Union argues that the County has an Enterprise fund used to account for the operation and insurance of the Justice Center jail facility. This facility resulting in a profit of over $1.4 million in 2013 and it has a fund balance in excess of $27.6 million.

The Union points out that the 2012 CAFR shows $343,998 was transferred to the General Fund for salary and benefit costs for non-jail County personnel which were Board approved. The 2013 CAFR shows $23,864 was transferred into the General Fund with Board approval. The total transfer to the General Fund in 2013 was $1,897,850.

County Arguments. Affordability Data. For the last few years, the County contends, the Sherburne County's Board of Commissioners has recognized that the citizens of Sherburne County had to survive in difficult economic conditions. For a time, Sherburne County had one of the worst unemployment rates and highest foreclosure rates of any county in the state, the County Board held the levy rate that generates revenue on the basis of property taxes flat or slightly lower from 2010 to 2014. Under such circumstances, the County contends using additional levy amounts against the citizens of Sherburne County to fund employee wage increases was deemed inappropriate by the Board for each of those years.

Nevertheless, the County contends, for 2015 the County Board decided to increase its tax levy to maximum amount of 2.5%. This increase recognizes that the local economy has improved, which has raised the taxable market value of the land in the county. Higher property value will allow the tax levy increase to be spread throughout the county so most citizens will see only a small increase in real estate taxes in 2015. The County contends it would inappropriate, however, to ask the citizens of Sherburne County to absorb a greater tax increase in one year to fund an unwarranted wage increase for county employees.

Despite the increase in the county levy for next year, the County indicates that Sherburne County will still need to use reserve funds and other cost cutting measures totaling over $1.6 million to balance the budget for 2015. The County notes that the county still has this budgetary shortfall in large part due to increased ongoing and compounding operating costs like wage increases and increased health care costs, as well as some loss of commercial tax revenue. Some of the wage increases were not fully budgeted for in the prior year, and must be balanced out in 2015.

The County notes its using the proposed levy increase and some fund balances from Health and Human Services and the Jail Enterprise fund to balance the budget for 2015. Many of the

county's labor groups, including this one, suggest that the county use funds from its Jail Enterprise Fund to fund increased wages to county employees. The County contends for many reasons cited cited above that using those funds is not a sound fiscal practice.

The County contends Jail Enterprise funds are already dedicated to other county expenditures. Currently, the County spends about $9 million a year to support operations of the jail and for debt payments. The jail is currently burdened with over $7 million in debt payments that need to be paid over the next five years. The Board approved of a policy states that requires the county to keep minimum of 3 months operating expense reserve in the Jail Enterprise fund. Current Board policy states that Jail Enterprise Funds can be used for one time capital improvements for the county, such as building projects, rather than to fund ongoing and compounding costs like employee wages.

Finally the County contends the county's fund balance, including the Jail Enterprise fund balance, should not be used to formulate policy on appropriate wages for county employees or as a source for payment of wages. Those decisions should be made on internal comparables and the county's respective placement in the external market. So, though the county may have the ability to fund the union's requested wage increase—that is the answer to the wrong question. The right question is whether the employees are paid fairly based on internal and external market comparisons.

The County also contends its offer results in an effective base wage increase of 6.0% over 2014 and 2015, when merit pay and the general increase's effect on other elements of pay are accounted for. See Vol. II, Ex. 8. The union's offer would result in a nearly 9% increase in just two years when those factors are considered. Vol. II, Ex. 7. Based on the county's calculation, there is a $106,528 difference between the two proposals for this small group of just 18 employees. It would be imprudent for the county to increase the wages of an already well placed bargaining unit to that level. As shown in other parts of County's brief, this union is very well placed based on internal and external comparisons, and the county's position on wage increases in 2014 and 2015 should be adopted.

Discussion

Affordability Considerations. Although the County may have the ability to fund the requested wage increase, the question is whether its prudent and fairly based on internal and external market comparisons. Using county fund balances (one-time money) to fund employees wages that recur and actually compound annually is a poor and unsustainable budgetary practice. Although the local and national economy is still improving, and many economic indicators show the start of a

recovery, it is still too soon to assume that the economy is healthy. Under these circumstances, a cautious approach to personnel costs is warranted.

Union Arguments- External Equity Comparisons. The Union seeks to use as its external market data the same13 counties in the County's external market group, and in addition, included Mille Lacs County since Mille Lacs is contiguous with Sherburne County. (The Union's external data)

The Union argues when compared with the (Union's external data) that the top Sergeant's pay was 12.90% above average in 1998 but their wage position continually slid down hill until 2012 when it reached an all-time low of 1.08% below average. When Mille Lacs is removed, these numbers become bleaker at 2.98% below average in 2012. The Union points out that the County's offer of a 2.0% increase for 2014 and 2.0% for 2015 will continue the "downhill slide." Sherburne County Sergeants will fall to at least 1.57% below the average in 2014 if the unsettled comparable Counties receive no increase. The Union argues that Its ultimate goal is to return the Sergeants' wages to their position within the comparable group they were prior to the recession in 2008. However, the Union contends its first concern is stopping the "downhill slide" their wages have experienced since 1996.

The Union contends its requested increase of 3.0% and 1.0% market adjustment for 2014, and 3.0% for 2015 is required to slow or stop the "downhill slide" in wages currently experienced by the Sergeants. Even with the Union's requested increases, the Union contends, it will not return the Sergeants to the prior position they held in 2008.

The Union argues that (Its) external data for the Captains still show the need for a market adjustment after having their wages adjusted in 2012. In 2011, they were 13.44% below average and are currently 5.04% below average. The Commander rank was created in 2012 with the wages set at 1.7% above average in 2012 and 3.8% in 2013. The Union points out that Sherburne County's Chief Deputy's wage is 16.4% above the average and is the third highest paid in this same external market. The Union Contends that (Its) external data strongly justifies the Union's request of a general increase of 3.0% and a 1.0% market adjustment for 2014 and 3.0% general increase for 2015. The Union's request for both years is necessary to stop the "downhill slide" currently experienced by the Sergeants and to bring the Captains in line with their external market.

County Arguments - External Equity Comparisons. The County notes that Sherburne

County has utilized the same comparator group since 2006, and that group was adopted in the only other interest arbitrations since. Minnesota Teamsters local 320 and Sherburne County, Minnesota Corrections Unit, BMS Case 05-PN-904 (Ver Ploeg 2006); AFSCME Council 65 and Sherburne County (Asst. County Atty. Unit, BMS Case 07-PN-0555. For this interest arbitration, the County proposes using the same comparator group included in this set of counties are Anoka, Benton, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Stearns, Washington, and Wright Counties. Accordingly, comparisons to that external market served as the basis for the drafting of the county's current class and compensation structure.

The County avers that Sherburne County is ranked 10th out of 13 counties in population, and also 10th out of 13 counties in relative tax capacity and has only 33.4% of the average population of the comparator county group. Sherburne County has only 28% of the average tax capacity of the comparator county group. An average relative ranking would put Sherburne at 6th or 7th on the list of 13 comparator counties. Given Sherburne County's key demographic differences from the comparator group, the County seeks to maintain a relative ranking amongst Its comparator group at about 90% of the average wages of the group.

The County contends the data supplied by the Union confirms that each of the job classifications within this bargaining unit is still well within the county's benchmark. Based on the union's data, the Sergeants were paid just .15% below the average of the comparator group in 2013; the Captains are paid just 4% lower than the average, and that the Commander is paid 3.8% above the average of the comparator group. See Union Ex. 9.[6] The Union fell far short of proving that the group is in a "downward slide" when 2 of the 4 positions have maintained the same relative ranking and the Sergeant's group is just .15% lower than the average pay in 2013.

The County Contends Arbitrators have noted that the union must show a compelling case to support a requested market adjustment.

> As many arbitrators dealing with interest arbitrations have noted, there must be a compelling reason [for a market adjustment] to be granted – either due to some anomalous underpayment, problems of attraction or retention, a significant change in the underlying job duties of a particular position or group of positions or some showing that the market has somehow left these employees behind. The union presented insufficient evidence on any of these factors.

Teamsters Local 320 and Benton County, BMS Case No. 14-PN-0551 (Jacobs 2014) (Vol. III, Ex. 2) at

9, footnote omitted. Even where a bargaining unit has lost some ground compared to the comparator groups, arbitrators require more compelling reasons to deviate from an internal pattern. See, for example *Hennepin County and Minnesota Public Employees Association,* BMS Case No. 12-PN-0697 (Schiavoni 2012) at 12 (adopting county position and rejecting union argument that loss of relative standing in the external market justified a wage adjustment that departed from an internal pattern). Here, the union has not presented a compelling case to deviate from the county's internal consistency that would support a market adjustment based on Sherburne County's relative standing within the comparator group.

The County contends the Sherburne County Sheriff's Supervisors are paid more favorably than their counterparts because they move so quickly through their respective salary ranges. It takes only months for some of these employees to reach the top of their salary range once they become part of this unit. For instance, it took Sergeant Johnson only 11 months to reach the top of his range; it took Sergeant Olmanson only 9 months. For most of the employees, it takes five years or less for them to reach the top of the range. Accordingly, this group's career earnings would compare very favorably to other Sheriff's Supervisors groups in the comparator counties that take longer to reach the higher wage rates.

The County contends in many respects, this bargaining unit fares much better than their external comparators. The most obvious example of this is in the area of health benefits. This group, and indeed all Sherburne County employees, have the most affordable and best health care of any of the comparator counties. The most important statistic is that Sherburne County has the lowest employee out of pocket cost for comprehensive health insurance for single coverage, and the lowest (or second lowest) out of pocket cost for family health care premiums. Sherburne County also provides more plan choices for its employees than any other county in the comparator group, allowing employees greater flexibility in fashioning appropriate coverage for their own circumstances. Sherburne County pays the entire cost of the health care benefits, and provides the cash back to the employee.

The County contends this Union group in particular takes advantage of this benefit. In 2013, 11 of the 18 bargaining unit members had their full health care insurance premiums paid for by Sherburne County, and received additional cash back. (Vol. II, Ex. 5). A number of employees from this bargaining unit received thousands of dollars in additional cash payments from this source.

The County contends Sheriff Supervisor's Group receives additional benefits that other Licensed Supervisors unions do not. These employees have a contractual right to participate in a fitness

incentive program that provides for an additional 1% or 2% of salary to each employee each year, per HR Director Chmielewski. This benefit is available to all qualifying employees within this bargaining unit. No other comparator county offers this benefit. For these employees, that can mean over an additional $1,500 per year that is not reflected in the wage rate, but that these employees can use to substantially boost their incomes over and above their comparators.

The County contends that the lack of turnover in this group is even more telling. HR Director Chmielewski testified that the county's general voluntary turnover rate is well below the industry averages, and would be even lower if resignations in lieu of termination were accounted for. (See Vol. I, Ex. 7, showing very low turnover rates county-wide.) What is even more impressive is the lack of turnover within the Licensed Supervisors bargaining unit: there has been no voluntary turnover within this bargaining unit for 18 years, aside from promotions and retirements, per HR Director Chmielewski. If other counties offered similarly-skilled employees more competitive wages, one would expect at least some employees to leave Sherburne County to work elsewhere. That is not this case with this bargaining unit because, based on all of the above factors, these employees are very well placed within the comparator group.

The County contends in sum, that this bargaining unit is appropriately placed within its comparator market. That is especially so considering that these employees enjoy the best health care plan, the lowest health care costs, cash back from health care contributions, fitness incentives, very high uniform pay, and other benefits that comparator counties do not. Especially considering the positive employee attraction and lack of employee turnover in this group, the union has failed to show a clear and compelling case to adjust these employees' wages over the county's offer of 2% in 2014 and 2% in 2015 that other county employees are receiving.

Union Arguments- Internal Equity Comparisons. The Union notes that Internal Equity is an important wage consideration as Minnesota's Local Government Pay Equity Act [hereinafter LGPEA] makes clear. "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 Sub. 2 (2013). The Union notes that the County conceded the granting of the Union's request(ed) (wages increases) would not take the County out of compliance with the LGPEA.

The Union contends that the Union's general wage and market adjustment is support by the

Consumer Price Index (CPI)for Minneapolis/St. Paul increase of 13.3% from 2008 to 2013 for Urban Wage Earners in the Midwest Urban, size B/C – 50,000 to 1,500,000. During this same period, the employees only received wage increases totaling 7.5 percent.

The Union contends the difference in CPI and Wages is approximately 6.0% which justifies a 3% general increase each year for 2014 and 2015. The County's offer a 2.0% general for 2014 and 2015 are substantially less than the increase in the cost of living. The State Budget has received more than estimates causing a surplus of fund resulting in a substantial increase of County Program Aid (CPA) for the County. An article from Wall Street list by Mike Sauter lists Minnesota as the 9th riches State in the United State with an Unemployment rare at 5.6% (9th lowest). The U.S. Bureau of Labor Statistics report shows Sherburne County's employment is as low or lower now than it was in 2007 before the recession at 4.3%.

The Union, also, contends the ability to pay the Union's requested wage increases and the continued compliance with the Pay Equity Act were not disputed by the County.

The Union contends that the County has negotiated a contract with one unit and provides "me too" wage and insurance language. That this contract is used to claim an internal pattern to get the other groups including non-union to accept the same percentage. The County has made wage adjustment for specific positions including the Captains in the bargaining union. Only three groups have settled for 2014. Sherburne County Highway Association settled for a 2% general wage increase for 2014 and 2015. Their contract includes "Me Too" language with any greater negotiated agreement. It does not include a higher increase received from Arbitration. Public Health Nurse Unit has settled for a 2% general wage increase for 2014 and 2015; however it includes a wage adjustment of over 4.3% for two employees. Health and Human Services General Unit has agreed upon a 2% general wage increase for 2014 and 2015. None of the Law Enforcement has settled contracts for 2014 or 2015.

Further, the Union contends arbitrators, in other arbitration, have found Law Enforcement Personnel are not the same as other Local Government Employees and have deviated in their award even if a perceived internal wage pattern exists. For a Male-dominated class, Minn. Stat. § 471.992 states, an arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993, together with other standards appropriate to interest arbitration. Minn. Stat. § 471.992, Subdivision 1 states, "in preparing management negotiations positions for compensation established through collective bargaining under

Chapter 179A...shall assure that compensation for positions bear reasonable relationship to similar positions outside of that a particular political subdivision's employment.

Finally, the Union claims that the 3% increase requested is justified and should be awarded to ensure that the wages of these members keep pace with increases in the cost of living standard. In applying the the cost of living standard, arbitrators rely heavily upon the Consumer Price Index (CPI) as a indicator of inflation, and as an escalator for income payments.

County Arguments- Internal Equity Comparisons. The County points out that Its currently in compliance with the requirements of the Minnesota Pay Equity Act, Minn. Stat 471.991 to 471.999, per HR Director Chmielewski. (See Vol. I, Ex. 6) Based on the County's estimates, awarding this group either parties' proposal will not affect the county's pay equity compliance this year, primarily due to the small size of the group—only 18 of Sherburne County's 620 employees are in this group.

The County contends that providing this group a salary increase that other employees do not receive may disrupt pay equity in the future. However, as HR Director Chmielewski testified, an arbitration award that deviates from an internal pattern is likely to upset the county's pay equity compensation system in the long run. For instance, this bargaining group is male dominated, consisting of 17 males and 1 female. If this group were to get a higher wage award than others that include either balanced classes or female dominated groups, over the long run—especially considering the compounding effect of wage increases—the higher wage increase to a male dominated group will likely create a gender pay equity problem. So, although a disparate award to this group might not immediately throw Sherburne County out of pay equity compliance, it might do over time. As already discussed above, it would also result in a circumstance where employees within this group are paid much more than their predicted pay based on the state's analysis of Sherburne County's class and compensation study.

The County contends that Arbitrators often look at other factors, especially other economic factors, when evaluating parties' respective wage proposals. One common economic factor evaluated is whether the employees' wages are keeping up with the consumer price index. For this region, generally the CPI-W is used for comparison purposes, per HR Director Chmielewski. If one were to look at strictly general wage increases provided to this bargaining unit, it appears that this group's general increases have fallen behind the CPI-W, and the union has made that argument in this case.

The County contends that in Sherburne County, however, general wages increases are just a

part of the salary adjustments that are made for employees on an annual basis. In addition, employees are eligible for promotional increases and for annual merit increases. (See Vol. II., Ex. 12). When these additional annual increases are accounted for, the Licensed Supervisors group has far surpassed the CPI over the last 5 and 9 years:It cannot be argued that this group has fallen behind the CPI-W when its members' average annual increases are 4.8% higher than the CPI over the last 5 years (15.9% minus 11.1%), and 17.8% higher than the CPI over the last 9 years (40% minus 22.2%).[7] These figures reinforce that this bargaining unit is very well paid, considering all components of its annual salary increases and additional elements of compensation.

Moreover, the County contends though the local and national economy is still improving, and many economic indicators show the start of a recovery, it is still too soon to assume that the economy is healthy, as Commissioner Schmiesing and County Administrator Taylor have testified to.

Based on all of the arguments above, the Arbitrator should award the County's proposal of a 2% general increase in 2014 and a 2% general increase in 2015.

Discussion

The Union has presented no compelling evidence to suggest that a different comparator group is more appropriate, or that circumstances have changed since the steering committee, outside consultant, county board, and two subsequent arbitrators have adopted and used the same comparator group since 2006.

The County was persuasive in establishing and keeping a relative ranking amongst Its comparator group at about 90% of the average wages of the group. This bargaining unit is appropriately placed within its comparator market. Especially considering the positive employee attraction and lack of employee turnover in this group,

The County's wage proposal is competitive and well within the County's benchmark established for the four (4) Licensed Supervisors bargaining Unit.

The Union fell short of proving that the group is in a "downhill slide" when 2 of the 4 positions have maintained the same relative ranking.

The Union present insufficient evidence for a market adjustment to be granted due to either some anomalous underpayment, problems of attraction or retention, a significant change in the

7Annual increases for this group are still well over the CPI if you deduct 1.9% for a 40 hour furlough that all Sherburne County employees were required to take in 2010.

underlying job duties of a particular position or group of positions or some showing that the market has somehow left these employees behind.

The Union has failed to show a clear and compelling case to adjust these employees' wages over the County's offer of 2% in 2014 and 2% in 2015 that other county employees are receiving.

Award: The County's position is awarded.

Issue #3. Paid Time Off – Amount of Longevity PTO – Article 17, Sec. 13

Employer Position: no change to Article 17, Section 13

Union Position: Increase the longevity PTO benefit from 16 to 40 hours.

Union Argument-Paid time Off - Amount of Longevity PTO – Article 17, Sec. 13

The Union contends longevity PTO is unique when compared with other counties with longevity simply because it is time off rather than pay on a monthly basis. The employee may then use it as time off or cash it in on an annual basis. This method protects the County from longevity adding to the overtime rates for the employees. The County values it at 0.8% of the employee's wage.[8] The chart also shows the Counties of Anoka, Benton, Hennepin, Isanti and Ramsey receive some form of longevity pay. Ironically, all of these Counties, with the exception of Isanti, pay a higher wage than Sherburne.

The Union contends in 2010, rather than imposing furloughs on the employees, the County required employees to purchase 40 hours of PTO. In addition, the employees were unable to cash out any of their PTO. They were required to take it as time-off. Subsequent to this mandate, employees suffered a major reduction in their annual income.

The Union contends Roxanne Chmielewski, Human Resource Director, testified it was very important to her to treat all employees the same. Apparently this only applies to wage increases. Longevity PTO is a County wide benefit and internal consistency does not exist. Arbitrators normally look for internal consistency for fringe benefits more so than wages. Arbitrator Befort wrote: "Interest arbitrators generally rely on internal comparisons in determining fringe benefits. The preference for internal consistency is even stronger with respect to fringe benefits than it is with respect to wages." Scott County Attorneys, Association and Scott County, BMS Case No. 04-PN-1279 (Befort 2005).T

The Union contends the Public Health Professional Employee's Unit has received a greater benefit that provides 24 additional hours granted after 20 years of service with the County at

least since 2009. Health and Human Services has received this benefit at least since 2011. The enhanced benefit apparently was used to entice the settlements with the Highway Association and the Corrections Supervisors. It is now in the Corrections Supervisors contract and the Highway Associations tentative agreement. It is obvious Sherburne County doesn't treat all its employees the same.

The Union contends the loss of PTO used for furloughs in 2010 and the lack of internal consistency of benefits more than justify the Union's request to increase the Longevity PTO to 40 hours, The Union requests that it be awarded.

County Arguments-Paid Time Off - Amount of Longevity PTO – Article 17, Sec. 13

The County contends he arbitrator should maintain the current longevity merit language in Article 17, Section 13. The union seeks an increase in longevity merit pay for employees that have reached the top of their pay grade from 16 hours (about .7% of salary) to 40 hours (about 1.9% of annual salary). In order to support an increase of this magnitude, the union has to either show clear and convincing evidence of a compelling need for the change, or that it offered a comparable quid pro quo for the additional benefit. In this matter, no quid pro quo was offered. The arbitrator should reject the proposed increase in this case.

[7]Annual increases for this group are still well over the CPI if you deduct 1.9% for a 40 hour furlough that all Sherburne County employees were required to take in 2010.

The County contends a recent arbitration award in Wright County rejected the inclusion of longevity pay because it would award a: substantive change in the terms of the parties' agreement. As noted above, such a change normally should be left to the parties' voluntary negotiations, and an arbitrator should not alter an existing contractual arrangement absent a compelling reason. Here, the Union has not advanced a compelling reason to support this proposed change.

Wright County Deputies Association and Wright County, BMS Case No. 12-PN-0968 (Befort 2012) (Vol. III, Ex. 12). Internally, no other union group receives a merit longevity benefit as high as that sought in this arbitration, per HR Director Chmielewski. County policy and most CBAs have exactly the same terms as the Licensed Supervisors, and those employees at the top of their pay range may receive an additional 16 hours of paid time off based on the merits of their performance. There are three CBAs that provide for a total of 24 hours of paid time off based on meritorious performance if the employee also has 20 years of longevity with Sherburne County. In those instances, per HR Director Chmielewski, the additional 8 hours at 20 years was negotiated as part of quid pro quo

bargaining—it was not just granted to employees. If an additional amount of PTO longevity were provided to Sherburne County employees without a bargained for exchange in this arbitration, that would surely lead to whipsaw bargaining, and unduly increase an already extraordinary county benefit.

The County contends this type of benefit is unique to Sherburne County. While some counties within the comparator group provide for longevity pay after a number of years of service, Sherburne County pays it once an employee reaches the top of the salary range. As previously mentioned, some of the employees within this bargaining unit reach the top of the range within months of entering the bargaining unit, which would make them eligible for this benefit in their very first year within the bargaining unit. Moreover, Sherburne County employees get the benefit in PTO hours, that can be exercised as time off, or banked and increase in value, while comparator counties get paid in cash. Some comparator counties do not provide longevity benefits at all, including Carver, Chisago, Dakota, Stearns, and Washington Counties. (See Vol. II, Ex. 10). Sherburne County's longevity benefit compares favorably to its external comparators in that the amount of pay is comparable, and Sherburne County employees get longevity merit pay sooner that the comparator counties.

The County contends based on these internal and external comparisons, the Union's evidence falls far short of showing a compelling reason for change in the longevity merit pay bonus. This group's language is consistent with a large majority of other Sherburne County employees, and no other group receives the 40 hours of merit pay this group seeks. Accordingly, this arbitrator should not award longevity merit pay to this group in an amount that Sherburne County would clearly never settle for, and should not award any additional hours of longevity merit pay without a quid pro quo exchange in collective bargaining, as was accomplished with other unions that received an additional 8 hours of longevity PTO once an employee reached 20 years of tenure with the county. Finally, the County contends there is no compelling reason to change this benefit when compared to the comparator county group, as, in many ways, Sherburne County's longevity merit pay amount is superior to the comparator counties.

Discussion

The union has to either show clear and convincing evidence of a compelling need for the change, or that it offered a comparable quid pro quo for the additional benefit. Accordingly, this arbitrator should not award longevity merit pay to this group in an amount that Sherburne County would clearly never settle for, and should not award any additional hours of longevity merit pay without a

quid pro quo exchange in collective bargaining. The Union failed to show any no compelling reason to change this benefit when compared to the comparator county group, as, in many ways, Sherburne County's longevity merit pay amount is superior to the comparator counties.

Award: The County's position is awarded.

Issue # 4 Injury On Duty – Amount of IOD Wage Supplement – Article 20

Employer Position: No change to Article 20

Union Position: Increase the IOD benefit from 30 to 90 days.

Union Arguments - Injury On Duty – Amount of IOD Wage Supplement – Article 20

The Union contends the Union is requesting to increase the Injury on Duty benefit from 30 days to 90 days prior to requiring County Board approval of an extension. Injury on Duty benefits are primarily a benefit due to the nature of work performed by law enforcement. In the settlement agreement with the County Highway Association, the County has extended this benefit to them enhancing the offer to reach an agreement.

The Union contends when the IOD benefit is compared with its availability in the County Group, 10 of the 13 comparable Counties provide a greater benefit. Stearns County is the only county providing the same benefit while Benton and Scott provide none.

The County argued there is no need to increase it because none of the deputies in this unit has used it. To their knowledge, only one corrections officer has ever used the benefit and it was extended to 90 days by County Board approval. The Injury on Duty benefit to a law enforcement officer is nothing more than an insurance policy which is only used when it is needed. If a law enforcement officer never needs or uses it, all the better. If it is needed, however, it should be sufficient to get the officer past the crisis.

The County Arguments - Injury On Duty – Amount of IOD Wage Supplement – Article 20

The County contends the Union seeks to increase the guaranteed amount of payment for bargaining unit members injured on duty from 30 hours to 90 days. Again, arbitrators do not generally change contract language and benefits unless the party seeking the change has demonstrated clear and convincing evidence of a compelling reason to do so, or demonstrated a bargained for exchange. The union has not offered a bargained for exchange in this case, and it

cannot show a compelling reason to change the language in Art. XX of this unit's collective bargaining agreement.

The County contends the 30 day pay guarantee on injury was the product of considered negotiation between the parties. In general, such pay provides a windfall for employees, who are already receiving tax free workers' compensation benefits in almost all cases. Accordingly, per HR Director Chmielewski, many third-party advisors suggest that injury on duty language be removed from labor contracts because it actually provides an incentive for employees to stay off of work: they get more take home pay when they are off-duty and injured than when they are on-duty and working.

The County contends, nevertheless, as Commissioner Schmiesing testified, the county recognizes that, at times, law enforcement jobs can be dangerous, so Sherburne County provides 30 days paid when a unit member is injured on duty, and provides that such pay may be extended with a doctor's note at the discretion of the Sherburne County Board of Commissioners. Such discretion is entirely appropriate. As the Commissioner suggested, the Board should be able to consider the circumstances of each case before providing full pay beyond the 30 days. For instance, there is a difference between an employee who is injured when tripping in the parking lot versus one that is injured in the line of fire. It is noteworthy that the Board recently has extended this benefit for an employee who was injured in a jail assault. The Board, per the Commissioner, should be able to retain its discretion as a steward of public funds, and to evaluate whether, in the unusual case, an employee might be malingering and abusing the benefit.

The County contends the language in Article XX of this unit's collective bargaining agreement compares favorably to other counties, when the Board's discretion is also considered. Some other CBA's have caps (Wright County), and still other counties do not provide for injury on duty pay for this type of employee, including: Chisago, Hennepin, Ramsey and Scott Counties.

The County notes that over the last 18 years, not one member of this bargaining unit has invoked this contractual provision. Given that no one from this group has used this benefit, it hardly needs to be changed to be more favorable. Based on the circumstances described above, the Union has not presented clear and convincing evidence of a compelling reason to change this bargained for language.

Discussion

Arbitrators do not generally change contract language and benefits unless the party seeking

the change has demonstrated clear and convincing evidence of a compelling reason to do so, or demonstrated a bargained for exchange. The union has not offered a bargained for exchange in this case, and it cannot show a compelling reason to change the language in Art. XX of this unit's collective bargaining agreement.

Award: The County's position is awarded.

Issue # 5 Insurance – Allocation of Employer Contribution to Cafeteria Plan – Article 11, Section. 2.

Union Position and Arguments: The Union is requesting an increase in the employer cafeteria contribution from the current $833.66 to $889.94 per month for the duration of the agreement. The County is proposing to keep the amount at $833.66 for 2014, eliminate the "Me Too" language and allow the Benefit Committee to set the contribution for 2015.

The County's proposal to keep the amount the same is based on the fact the insurance rates decreased during the prior contract and the contract prevented them from decreasing its contribution. In 2014, the premiums/employee costs have not quite reached the level it was in 2010 when everyone was required to take furloughs.[9] However, the insurance premium for 2014 did increase by 13,3% over 2013, The employees will be paying more than they were in the past if premium increase by the same percentage for 2015.

The Union contends the County keeps dwelling on the fact that a number of the officers are taking single insurance and receiving cash or deferred compensation because the premium is less than the amount received. Insurance rates did increase by 13.3% from 2013 to 2014 so this difference would decrease by the same amount. This is a reduction of approximately $58.00 a month. We are asking for an increase of $56.28. An individual taking family insurance will be paying an additional $148.00 per month if the County's position is awarded. These numbers will be larger if insurance rates increase by the same percentage for 2015.10

The 2.0% general wage increases offered by the County does not cover the increase in insurance premiums for a person requiring family coverage. The 3.0% general wage increases requested by the Union will at least cover the additional insurance costs if the contribution amount is increased.

County Position and Arguments: The County currently provides $833.66 per month, and the Union seeks an increase to $889.94. Under the circumstances of this case, the union cannot show clear and convincing evidence of a compelling reason to change the County's contribution amounts, for reasons already discussed above: Many county employees, including 11 of the 18 in this group in 2013

receive thousands of dollars in extra compensation because the current amount of the county contribution already exceeds the employees' health care expenses. Supplying additional cafeteria cash would simply provide these employees extra cash compensation.

Moreover, as HR Director Chmielewski testified, the employees' cost for health care in Sherburne County is still lower than they were in 2010 when the county changed providers. (See Vol. I, Exs. 17 & 18).

The County contends that the Union's sought increase for health insurance payments is easily dismissed under these circumstances. Sherburne County has the best health benefits at the lowest cost to employees of any comparator county, all other Sherburne County employees get the same level of contribution as this group, many employees from this group and county-wide get thousands of dollars in extra cash based on the current amount of the county's contribution, and employee health care costs are still lower than they were in 2010. Under these circumstances, the union simply cannot provide clear and convincing evidence of a compelling reason to increase the contribution amount of $833.66 for this bargaining unit.

Discussion

Under the circumstances of this case, the Union cannot show clear and convincing evidence of a compelling reason to change the County's contribution amounts, for reasons already discussed above: Therefore, the current amount of the County's contribution to the Employee's Cafeteria Benefit plan in Article 11, Section 2 shall be maintain.

Awarded: The County's Position is awarded.

Issue # 6 Insurance – HDHP and VEGA Participation for Cafeteria Plan – Article 11, Section 2. and

Issue # 7 Insurance – Benefit Advisory Committee to Address Plan Design Issues Related to ACA – Article 11, Section 2.

The Union Position: The Union requests no change to the current language in the Labor Agreement.

The County Position and Arguments: The County seeks to add the the following language changes in bold:

ARTICLE XI INSURANCE **CAFETERIA BENEFIT PLAN**

Section 2. Employer Contribution. The employer shall provide a "base" employer contribution

of $833.66 per employee per month **for calendar year 2014**. This amount will be pro-rated for eligible part-time employees. The cost of benefits provided by the employer and with respect to which the employee has no choice ("required benefits") shall be subtracted from the base employer contribution. **The employer contribution shall first be applied to the selected health insurance plan and then to the required basic life insurance plan. The remainder of the employer contribution, if any, will then be applied to other selected plan options. Any remaining contribution not applied to plan options shall be added to payroll.** The remainder shall be the employer contribution made to the Section 125 cafeteria plan for that employee and allocated as provided in that plan. Implementation of a Voluntary Employees' Beneficiary Association (VEBA) trust is authorized as an optional plan available to employees. If any other employee group is provided a level of county contribution to the cafeteria benefit plan that exceeds that set forth herein, the employees covered by this Agreement shall receive the higher level effective the same date. Employees who fashion a benefit plan which does not use the entire amount of the employer contribution shall receive the difference between the employer contribution and the selected benefit plan costs as an addition to payroll or shall have the option of placing said amount in an approved deferred plan. **In addition, should an employee choose to enroll in a high deductible health plan (HDHP) with an associated Voluntary Employees' Beneficiary Association (VEBA) trust, the employer agrees to fund a predetermined portion of the deductible. Employer contribution to the VEBA will reduce the employer "base" contribution. Additionally, the employer proposes convening the labor/management Benefit Advisory Committee and a contract addendum solely for the purpose of addressing county contribution and any plan design issues related to the Affordable Care Act compliance prior to the October, 2014 open enrollment for the health insurance plan effective January 1, 2015.**

The County contends that this language is designed to provide for clarity and flexibility for the union and the county to adapt to those changes. The language concerning the application of the cafeteria amounts first going the health care benefits does not change the employees' benefits at all and would have not practical or economic impact on employees. It would, however allow the county to easily show that is providing Affordable Benefits because payments are clearly applied to benefits first, rather than to other benefits like long term disability, short term disability, life insurance and the like. This language is consistent with how the county currently applies the cafeteria payments. Moreover, the language concerning the health care benefits committee simply memorializes the county's current practice as well. The county has a compelling reason for the change: compliance with a federal ACA

law, clarity, and flexibility for both parties concerning health care. Accordingly, the arbitrator should award this proposed change in language.

Union Arguments - HDHP and VEBA Participation for Cafeteria Plan — Article 11, Section 2

The Union is requesting the language of Section 2 of Article XI remain unchanged. The County has proposed a number of changes addressing HDHP and VEBA plans in the cafeteria plan. The Union cited an arbitration award of Arb. Gordon who wrote, “"Generally, an arbitrator should not alter a longstanding contractual arrangement in the absence of a compelling reason to do so, and will place the burden on the party proposing a change to demonstrate the need for it by clear and compelling evidence or a quid pro quo." *Law Enforcement Labor Services, Inc., Local 230 v. Benton County,* BMS 14-PN-0711)(Gordon 2014).

The Union contends that the current language is consistent with language in prior agreements as far back as 2008. It contains "Me Too" language relating to the employer contribution received by other groups. Also the County's proposed language is just a slight change to the current language. The County has not presented any compelling reason to make the language changes, especially removing the "Me Too" language without providing a quid pro quo.

Union Arguments - Benefit Advisory Committee to Address Plan Design Issues Related to ACA — Article II, (NEW)

The Union objects to the addition of new language relating to plan design issues relating to Affordable Care Act (ACA). The County wants language that allows the Benefit Committee to set the employer contribution for 2015 and make plan design changes relating to ACA.

The Union contends the proposed language gives the Benefit Committee the authority to determine the employer contribution for 2015 and any reduction in aggregate value caused by plan design changes caused by ACA. An award of the Union's proposal for an increase in employer contribution for both years will eliminate the need for the committee to unilaterally set the employer contribution for 2015.

The contends in the Benton County arbitration, the County was attempting to add language requiring the Union to immediately negotiate changes if the County would be liable for penalties or taxes related to ACA. Arbitrator Gordon rejected the County's request to add this language to the agreement when he found, "The record does not demonstrate that the County is out of compliance with the Affordable Care Act, and so there is no evidence of any compelling need to add this language to the Agreement. There has been no quid pro quo for it." Law Enforcement Labor

Services, Inc., Local 230 v. Benton County, BMS 14-PN-0711)(Gordon 2014)..

The Union notes unlike Benton County's attempt to add negotiations of the issue to the contract, Sherburne County is asking the Union to actually give up the right to negotiate plan changes. The Union requests that the language relating to plan changes relating to ACA not be added to the agreement.

Discussion

Unlike the findings in Arbitrator Gordon case, in this arbitration there is evidence of compelling needs to add the language to the Agreement because of compliance with a federal ACA law, clarity, and flexibility for both parties concerning health care. Therefore, the current Collective Bargaining Agreement shall be modified to reflect the requirements of the Affordable Care Act.

Award: The County's positions are awarded in issues #6 and #7.

Conclusions and Decision:

Based on all of the above arguments, opinions, discussions and awards, the language of the County's proposal as set forth in it submission to BMS on or before May 12, 2014 is hereby awarded.

Issued and ordered on the 7th day of November 2014, from Savage Minnesota.

Harry S. Crump

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Harry S. Crump, Arbitrator