MINNESOTA BUREAU OF MEDIATION SERVICES

INTEREST ARBITRATION

TRAVERSE COUNTY, MINNESOTA,

EMPLOYER,

ARBITRATOR'S AWARD

-and-

BMS Case No. -08-PN-0862[1]

TRAVERSE COUNTY HIGHWAY

EMPLOYEE COUNCIL,

COUNCIL.

ARBITRATOR: Rolland C. Toenges

DATE OF MEDIATION: March 18, 2008

DATE OF ARBITATOR SELECTION: May 13, 2008

DATE & PLACE OF HEARING: June 10, 2008

Wheaton, Minnesota

[1] This case was initially identified in error as #08-PA-1184, a case number assigned to grievance cases.

DATE POST HEARING BRIEFS RECEIVED: June 26, 2008

DATE OF AWARD: July 23, 2008

ADVOCATES

FOR THE EMPLOYER:

Justin R. Anderson, Attorney

Kratochwill & Anderson, P.A.

FOR THE COUNCIL:

Kevin Leininger, Maint. Man II

Mike Doll, Engineering Technician

WITNESSES

Janet Raguse, Traverse County Coordinator

ALSO PRESENT

Gerald Kaus, Traverse County Commissioner

David R. Naatz, Traverse County Commissioner

ISSUES AT IMPASSE

1. Salary rates – 2008
2. Salary rates – 2009
3. Salary rates – 2010
4. Insurance – 2008[2]
5. Insurance – 2009
6. Insurance – 2010

---

[2] At the hearing, it was stipulated that the issue of insurance had been settled and the parties had agreed on what was identified as "Alternative #1." A summary of the Alternative #1 insurance benefit agreed upon is in the record as Employer Exhibit #10.

JURISDICTION

The instant matter came on for hearing pursuant to a determination by the Commissioner, Minnesota Bureau of Mediation Services (BMS), that the Parties had reached an impasse in their attempt to negotiate an agreement setting forth terms and conditions of employment.

The Parties selected Rolland C. Toenges to arbitrate the issues in dispute.

Arbitration of the instant matter is being conducted in accordance with the provisions of the Minnesota Public Employment Labor Relations Act, 179A.01 – 179A.30 (PELRA). Under PELRA, the employees at issue are defined as "non-essential employees" and, upon certification of impasse by the Commissioner, BMS, may chose to strike or submit issues in dispute to binding arbitration as has been done in the instant case.

A hearing was conducted on June 10, 2008 in Wheaton, Minnesota. The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the issues in dispute. The witness was sworn under oath. There was no request for a stenographic record of the hearing.

The Parties stipulated that the Arbitrator's decision is to be based on "Final Offer-Total Package." This requires that the Arbitrator must choose either the Employer's position on all items in dispute or the Council's final position on all items in dispute.

The Parties filed post-hearing briefs, dated June 24, 2008, which were received by the Arbitrator on June 26, 2008.

BACKGROUND

Traverse County is a public jurisdiction located in west central Minnesota and borders on parts of both North Dakota and South Dakota. Its primary industry is agriculture. The County Seat is Wheaton, Minnesota.

Traverse County employees are represented in several collective bargaining units, including a Law Enforcement Unit, represented by Law Enforcement Labor Services (LELS); a General Governmental Unit, represented by the American Federation of State, County and Municipal Employees (AFSCME); and a Public Works Unit, represented by the Traverse County Highway Employee Council (Council).

Collective bargaining Agreements have been completed with LELS and AFSCME for years 2008, 2009 and 2010. Compensation has also been settled for administrative, appointed and elected officials. The only employees not having compensation settled are the employees represented by the Council and at issue in the instant proceeding.

The Traverse County Highway Employee Council (Council) consists of some nineteen employees in the classifications of Maintenance Man, Sign Man, Highway Technician, Mechanic, Accountant, Maintenance Supervisor and Highway Technician III. Due to the relatively small number of workers and the wide variety of tasks to be performed, there is considerable crossover in their duties.

The record shows that the Parties have negotiated collective bargaining agreements since at least 2002.[3] Negotiations for the collective bargaining

---

[3] Exhibit #16.

agreement (CBA) in dispute began on May 21, 2007, via a letter of intent from the Council to renegotiate the existing CBA. Thereafter proposals and counter proposals were exchanged between the parties through December 2007 when the Parties labeled their proposals "final."[4]

On January 22, 2008, the Employer petitioned the Commissioner, BMS for mediation services in the interest of resolving the bargaining impasse.[5] The Commissioner, BMS, assigned a mediator to assist the Parties and a mediation session was held on March 18, 2008, but was unsuccessful in resolving the impasse.

Subsequent to the failed mediation effort, the Parties continued negotiations in an effort to resolve settle the contract, but without success.[6]

Thereafter the Employer petitioned for arbitration, which brings the matter to the instant proceeding.

EXHIBITS

1. Traverse County Highway Employees Council Collective Bargaining Agreement – 2005 through 2007.
2. Letter of Intent to Renegotiate CBA, dated May 21, 2007.
3. Traverse County Proposal and Response, dated October 3, 2007.
4. Traverse County Proposal, dated November 9, 2007.
5. Traverse County Proposal and Response, dated November 29, 2007.
6. Undated Council Responses, undated and December 19, 2007.
7. Petition for Mediation Services.

---

[4] Exhibits #5 and #6.
[5] Exhibit #7.
[6] Exhibit #9 and #10.

8. Traverse County Proposal, dated April 1, 2008.
9. Traverse County Proposal, dated May 27, 2008.
10. Final Position on Open Issues.
11. Employer's Wage Proposal Methodology.
12. 2008-2010 Traverse County & LELS Negotiation Materials.
13. 2008-2010 Traverse County & AFSCME Negotiation Materials.
14. 2008 Cost of Living Increase Information from surrounding counties.
15. 2008 Department Head Increases and Related Information.
16. Summary of Traverse County Collective Bargaining Settlements after 2002.
17. 2004-2008 Traverse County Tax Levy Information.
18. Traverse County Fund Balance Information.
19. 2007 Pay Equity Compliance Letter and Certificate.

POSITION OF THE PARTIES

THE EMPLOYER PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- The Employer's proposal is designed to adjust wage rates to better reflect market pattern.
- The Employer's position provides for increases of 4.0% to 8.0% to all employees at the top step, where a majority of employees are placed, to reduce the pay gap with the market pattern.
- The Council's position widens the pay gap and would leave all employees in the same or worse condition with respect to the market pattern.

- The other bargaining units (LELS & AFSCME) have settled consistent with the Employer's goal of better adjusting wage rates to the market pattern.
- The Employer's goal of adjusting to market pattern has also been applied to administrative and appointed officials.
- The comparison counties used in the Employer's market study conform to generally accepted comparison standards of similar population, territorial size, department size, tax base and economies.
- The Employer's goal is to better adjust wage rates to the market pattern by increasing them 50% of the difference between Traverse County's rate and the market rate, but generally not more than 8.0%.
- Although the Employer's proposed adjustment formula will not achieve full parity with the market pattern, it will substantially reduce the disparity.
- The Employer's proposal is more generous than the 3% average cost of living increases granted by comparable counties.
- The Employer wants consistent settlements to remain in compliance with Pay Equity requirements.
- Traverse County's net tax levy has increased in double digits from 2004 through 2007
- The Employer is facing a 3.9% levy limit beginning in 2009 that requires diligent allocation of available resources.
- The State Auditor recommends a fund balance of 5/12 of the County's annual expected expenditures.
- The Employer's fund balance is 1.4 million short of what it should be and the Highway Department has had a negative balance.
- The Arbitrator should consider the issue of finances prospectively, as the Employer no longer has the option of levy double-digit tax increases.

- It is as important to apply the Employer's market wage rate approach to Highway Department employees as it is with other County employees.
- The Employer's philosophy has been to treat all of its represented employees equally with regard to wages, by making market adjustments when needed and to provide a similar, if not identical, cost of living increase after such adjustments.
- Historically and presently, the pay of the Council has been guided by a consistent package that has been on par and consistent with other Traverse County bargaining units.
- Adopting the Council's one-year position would create substantial pay inequities with other Traverse County employees.
- For all of the foregoing reasons, the Employer's position is the appropriate remedy.

THE COUNCIL PRESENTS THE FOLLOWING ARGUMENTS IN SUPPORT OF ITS POSITION:

- All Council members would like to be treated the same for pay increases.
- The Employer's position is not saleable to the Council bargaining unit as it only benefits four of the nineteen employees in the unit.
- The Employer's position provides one employee with a 3.0% increase; the majority would receive 4.0%, while three employees would receive from 4.5% to 8.0%.
- The Council's position of a 2008 four percent (4.0%) increase across the board is viewed by employees as the most equitable.

- Employees in other bargaining units received a minimum of a four percent (4.0%) increase in 2008.
- The Employer wage study is unreliable. There needs to be a new wage study, as the comparisons are not accurate.
- The rate used for market comparison of Maintenance Supervisor and Engineering Technician is incorrect (inverted).
- Reduction of staff in the Highway Department has increased the work and responsibility for employees while there have been significant staffing increases in other departments of the County.
- In the past nine years, the number of employees in the Public Works Bargaining Unit has declined by two while in the Courthouse and Social Services Unit has increased by at least two in each department.
- The Council is concerned about how many of the Highway Department positions that will be vacant due to retiring employees will be refilled and, if not, the additional work load placed on employees.
- While Highway employees are experiencing increased work and responsibility, Comparable Worth Points have been reduced.
- A new Comparable Worth Study needs to be conduced and the findings should be the deciding factor in any variable rate increase for Council represented employees.
- The increases proposed by the Employer are insufficient and will not allow Council employees to catch up to the wage rates paid by surrounding counties for many years.
- Considering the increased cost of fuel and other items, a three-year contract with a 3.15% and 3.25% increase will not be sufficient to offset these cost increases.

- Although the insurance package agreed upon will increase premiums by only 2.5%, deductibles are double what they were previously and co-pays increased from 80-20 to 70-30.
- The Council is concerned that a man with as many or more Comparable Worth Points than a woman does not receive the same increase as the woman
- The Council is also concerned that the Employer can adjust the Comparable Worth Points without any notification to employees being affected.
- The three-year contract proposed by the Employer leaves the Council not knowing what the cost of insurance will be for the second and third year of the CBA.
- Neighboring counties that were paying comparable salaries to Traverse County that have gone through or are presently going through Comparable Worth studies are now paying, on average, a minimum of 8.0% higher than Traverse County.
- The Employer's position is insufficient for the Council to agree to a three-year contract.

DISCUSSION

The initial issues in dispute were wages and insurance for 2008, 2009 and 2010. The Parties stipulated that they reached agreement on the issue of insurance prior to the arbitration hearing. Therefore, the only issue before the Arbitrator is wages for 2008, 2009 and 2010.

The Parties also stipulated that the Arbitrator is to award based on "Final Offer–Total Package." Accordingly, the Arbitrator must award either the final position

of the Council or the final position of the Employer. The final positions of the Parties is as follows:

> COUNCIL: "A one-year contract [2008] with a 4.0% increase in wages and a Comp-Worth study to be implemented in the county."[7]
>
> EMPLOYER: "2008 wage adjustments based on market survey results with increases ranging from 0.0% to 8.0%. Wage adjustments of 3.15% in 2009 and 3.25% in 2010."[8]

It is noted that the Comp-Worth study referenced in the Council's position is not within the scope of the wage issue certified at impasse. Therefore, the Arbitrator is limited to awarding only on the wage issue per se.

According to the record, the Employer's position for 2008 would result in all but four of some 19 employees in the bargaining unit receiving a 4.0% increase. One would receive a 3.0% increase and three would receive higher increases ranging from 4.5% to 8.0%.[9] The employees receiving the higher increase are Maintenance Supervisor at 4.5%, Mechanic at 7.0% and Accountant at 8.0%.[10]

Although the Employer's 2008 position provides for increases ranging from 0.0% to 8.0% no employee would receive less than 4.0%. This is because no employee is currently at the lower rates in the pay range where 0.0% would apply.[11]

Although the Council raised issue with the Employer's Comparable Worth (Pay Equity) study and results, the Parties stipulated that an award of either Parties

---

[7] Final position as set forth in Council's "Brief of Arbitration."
[8] Final Position as set forth in Employer Exhibit #10.
[9] The record is not clear whether three or four employees would receive higher increases under the Employer's position. The record shows both.
[10] Employer Exhibit #10.
[11] Testimony of Janet Raguse.

position would not cause the Employer's Pay Equity plan to be out of compliance.

In some respects, the parties' positions are opposite what might normally be expected. The cost of the Council's position for 2008 is lower in cost than the Employer's position. The Employer's position is for a three-year contract with increases in 2009 and 2010 above the market settlement pattern.[12] This is despite the Employer facing difficult budget issues including an unfavorable fund balance, future financing limitations imposed by the state legislature and a less than favorable economic outlook.[13] However, a look at the basis for their positions provides explanation.

For the Council, the Employer's position, although more costly, is unacceptable to the majority of employees in the bargaining unit. Of the 19 employees, only three would receive an increase higher than the 4.0% minimum received by all employees in all other bargaining units. Of those receiving the higher increase, the Council disputes the basis for the higher amount and wants all employees in the unit to receive the same 4.0% increase.

The three employees receiving the higher increase are in single incumbent classifications. One is a supervisor, one an office worker and the third a mechanic. It was noted during the hearing that Maintenance Workers, who do much of the mechanical repair work,[14] would receive a 4.0% increase under the Employer's position while the Mechanic would receive a 7.0% increase.

---

[12] Employer Exhibit #14.
[13] Employer Exhibits #17 and #18.
[14] Cross-examination of Janet Raguse by Mike Doll.

The Council takes issue with the accuracy of the Employer's market survey results and gives this as the main reason it didn't settle. The Council argues that the job comparisons are not accurate and do not fully take into account differences in job content. An example given was the job of Highway Technician in Big Stone County, which the Council argues is not comparable because it is not a certified position as is the case in Traverse County. The Council also argued that Maintenance Worker in Traverse County performs considerable mechanical repair work (75%) due to the shortage of mechanics.[15] The Council argues that other departments are getting more workers while the Highway Department staff is getting smaller. The Council argues that the smaller staff places greater responsibility on the remaining workers.

The Council also takes issue with the accuracy of the survey results and argues that the Employer's reliance on the survey, as a basis for its wage proposal, resulted in the Employer's unacceptable wage proposal. For example, the Council pointed out that on Employer Exhibit #11, the wage data for Engineering Technician and Maintenance Supervisor were inverted.

The Council further takes issue with the Employer's Pay Equity System and the manner in which points are assigned. The Council expressed concern that jobs in the Highway Department were lowered while jobs in other departments went up and no explanation has been provided. The Council wants to discuss the Comparable Worth Study with management before agreeing upon more than a one-year contract.

---

[15] The Testimony of Janet Raguse was that the Highway Department has fewer employees and has lost one Mechanic.

The Employer's 2008 position is based on its goal to adjust rates to be more consistent with the external market pattern. The Employer conducted a salary study of four surrounding counties (Stevens, Big Stone, Grant and Wilkin). The study revealed that Traverse County's rates were below the study average at the high end of the salary schedule, but in most cases were above the average at the lower end of the salary schedule.

To adjust Traverse County's rates to better coincide with the study findings, the Employer's position is to freeze lower rates in the salary schedule (0.0%) and apply progressive percentage adjustments to the higher rates in the salary schedule. The procedure used by the Employer for rates below the survey average was an increase of one half the difference to a maximum of 8.0%, subject to an exception where this would be inconsistent with the Pay Equity plan. All employees received at least a 4.0% increase even though rates at the lower end of the salary schedule were not increased or increased less than 4.0%. This was because no current employee was at a rate increased less than 4.0%[16]. This salary increase procedure was agreed upon and implemented for the General Government unit represented by AFSCME.[17]

A separate external market study was conducted for the Law Enforcement Unit represented by LELS due to the construction of a jail in Traverse County. The external salary study surveyed some nine other counties operating jails. Based on the findings of the study, two 3.25% steps were added to the top of the salary schedule in 2008.[18]

---

[16] Testimony of Janet Raguse.
[17] Testimony of Janet Raguse.
[18] Testimony of Janet Raguse.

The General Government Unit and the Law Enforcements Unit both settled contracts for 2008, 2009 and 2010 containing the above referenced 2008 salary adjustments plus a salary adjustment in 2009 of 3.15% and 3.25% in 2010. The three-year contract for these units also included the same insurance package agreed upon with the Council and implemented for the Employer's executive and managerial staff.[19]

2008 salary adjustments were also implemented for the Employer's executive and managerial staff and ranged from less than 3.0% to 10% based on a salary survey of the same four surrounding counties used in the Highway Department and General Government surveys.[20]

An award of the Council's position would actually cost less than the Employer's position for 2008 and, although the difference in cost is not great, it would help mitigate the financial stress the Employer argues it is experiencing. The record also shows that the Employer is not experiencing difficulty in the recruitment or retention of employees except for nurses in the Care Center[21]. Further, Traverse County is not losing employees to other counties.[22] Therefore, not implementing the higher salary adjustments the Employer has proposed for Mechanic, Maintenance Supervisor and Accountant would not appear to jeopardize the Employer's ability to retain these employees.

The commonly accepted basis for making salary adjustments above the general cost of living increase is: 1). The need to improve ability to recruit and retain employees; 2). Inadequate differentials between classifications in a job series; and

---

[19] Testimony of Janet Raguse.
[20] Employer Exhibit #15.
[21] Testimony of Janet Raguse.
[22] Testimony of Janet Raguse.

3). Inadequate differentials between supervisory and non-supervisory employees. The record does not show that any of these conditions exist in the instant matter. In fact the record shows that the Maintenance Supervisor does not want the proposed salary increase in the Employer's position.[23]

While awarding the Council's position does not appear to have any negative effect on the considerations referenced above, the Arbitrator is reluctant to make a one-year salary award due to the fact that the Parties will almost immediately need to begin negotiations on salary rates for 2009 and 2010.[24] While the Council has some legitimate issues such as the accuracy and methodology of the Employer's salary survey and questions about the manner and application of the Employer's Pay Equity system, it is not likely that all these issues can be adequately addressed in the limited time between now and when 2009 salary rates should go into effect. This is particularly true of the Council's position set forth in its post-hearing brief calling for a Comparable Worth study to be implemented.

An award of the Employer's position would establish a period of labor stability via a three-year contract, which will allow adequate time for the Parties to address the issues raised by the Council concerning the salary survey and application of the Pay Equity system. The Employer's position provides for cost of living adjustment in the second and third year that is consistent with settlements involving the other two bargaining units and, based on survey data in the record, is above the external settlement pattern. All things considered, it is not likely the Council would be successful in negotiating more favorable

---

[23] Testimony of Janet Raguse.

[24] The record shows that salary rates are the only issue in dispute for the three-year period.

increases for 2009 and 2010 than those contained in the Employer's position. The Employer's position for 2009 and 2010 appears reasonable considering the Employer's financial limitations, the external settlement pattern and current economic conditions.

Awarding the Employer's position is not to diminish the importance of the issues raised by the Council. The Arbitrator finds that the Council has risen what appear to be legitimate issues with respect to the methodology and accuracy of the Employer's salary survey and the manner in which points are allocated under the Pay Equity System. It will be important for the Parties to resolve these issues in the interim before new contract negotiations get underway.

The Arbitrator suggests the Parties may wish to examine whether sufficient commonality of interest exists for the classifications of Accountant and Maintenance Supervisor to be in the same bargaining unit with the other Highway Department employees. The concern of the Council, with respect to the higher increase proposed for the Mechanic and not for the Maintenance Worker is obviously related to the latter believing they are also entitled to a higher increase due to performing a substantial amount of equipment maintenance activity.

FINDINGS

On balance, the Arbitrator finds the Employer's position more favorable. It provides a salary increase of 4.0% for 2008, the same as the Council's position, albeit giving several employees a greater increase rather than the straight 4.0% across the board favored by the Council. All things considered, the Employer's position of a 3.15% cost of living increase in 2009 and a 3.25% cost of living

increase in 2010 appear reasonable. Considering current economic conditions, the Arbitrator believes it highly unlikely the Parties would be able to agree on higher increases for 2009 and 2010 if the Council's position were awarded. Awarding a contract extending through 2009 and 2010 will provide sufficient time for the Parties to resolve issues raised by the Council concerning the salary study and Pay Equity System before negotiations begin for a new contract.

AWARD

The Employer's final offer is awarded. The effective date is to be retroactive to the date salary adjustments were implemented for the other Traverse County employees.

CONCLUSION

The Parties are commended on the professional and through manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this matter.

Issued this 23rd day of July 2008 at Edina, Minnesota.

_____

Rolland C. Toenges, Arbitrator