

IN THE MATTER OF ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc., Local No. 95,
Union,

and

City of South St. Paul, Minnesota,
Employer or City.

OPINION AND AWARD

Interest Arbitration
BMS Case No. 11-PN-0027

Police Unit

ARBITRATOR:

Gerald E. Wallin, Esq.

DATE OF AWARD:

August 24, 2011

HEARING SITE:

South St. Paul, Minnesota

HEARING DATES:

July 21, 2011

RECORD CLOSED/BRIEFS RECEIVED:

August 5, 2011

REPRESENTING THE UNION:

Ms. Kimberley Peyton Sobieck
Business Agent
Law Enforcement Labor Services, Inc.
327 York Avenue
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REPRESENTING THE EMPLOYER:

Mr. Frank J. Madden
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JURISDICTION

The hearing in this matter was held on July 21, 2011. The undersigned was selected to serve as interest arbitrator pursuant to Minnesota law and the procedures of the Minnesota Bureau of Mediation Services. The Commissioner of the Bureau certified six issues to be at impasse for interest arbitration pursuant to Minn. Stats. §179A.16, Subd. 2. At the hearing, the parties announced that one of the issues had been resolved via matching language of their respective final offers.

Both parties were afforded a full and fair opportunity to present their evidence pertaining to the remaining five impasse issues. Witnesses were sworn and their testimony was subject to cross-examination. The parties submitted post-hearing briefs, duly received on August 5, 2011, which closed the record, and the matter was taken under advisement.

ISSUES

According to the submissions of the parties, the following are the issues remaining for interest arbitration:

1. Wages for 2010.
2. Wages for 2011.
3. Step movement for 2011.
4. Hours of Work - Comp time for 2011
5. Vacation Accrual Method

BACKGROUND

The Employer City of South St. Paul, Minnesota is a first-tier suburb of St. Paul located in northeast Dakota County that was first organized in 1887. It is bounded by the cities of St. Paul on the north, West St. Paul on the west, Inver Grove Heights on the south, and the Mississippi River on the east. The City has a relatively stable estimated population of 20,000. It provides services to an area of approximately 6 square miles. The City provides two services that are unique among most cities in the metropolitan area. It owns and operates a modest sized airport with 250 resident aircraft, 63,000 annual landings, and 82 leased hangars. The City also owns and operates its own library, which is not part of the Dakota County library system.

The workforce employed by the City includes four bargaining units. The instant Police unit has 24 members comprised of 15 Patrol Officers, 5 Investigators, and 4 Sergeants.

The parties' most recent previous labor agreement covered three calendar years that expired December 31, 2009. The provisions of that agreement involved two long-standing practices. Whether those practices should be changed or continued are two of the impasse issues.

Both parties presented extensive evidence about the financial condition of the Employer, the current economic climate affecting the Employer, the prognosis for that climate, and wage information for externally comparable cities. As noted, both parties summarized the merits of their respective positions on the impasse issues by means of comprehensive post-hearing briefs.

ISSUES 1 AND 2. WAGES FOR 2010 AND 2011.

The respective positions of the parties are as follows:

Wages for 2010

Union Position Effective January 1, 2010, the wage scale shall be increased by 1%.

Employer Position There shall be no wage scale increases for 2010.

Wages for 2011

Union Position Effective January 1, 2011, the wage scale shall be increased by 1%.

Employer Position There shall be no wage scale increases for 2011.

ANALYSIS AND OPINION ON ISSUES 1 AND 2

Contemporary interest arbitration awards in Minnesota have tended to coalesce around four primary areas of consideration to resolve impasse issues when bargaining parties have failed to reach their own agreements. These considerations may be described as the employer's ability to pay, internal consistency, the comparison of the Employer's position with the external market, and other relevant factors such as cost of living, recruiting & retention problems, and the like. Since the emergence of the economic storm clouds across the State of Minnesota as well as the nation in 2007-2008, the relative significance of these four areas of consideration has changed. Because the economic headwinds have not affected all local units of government uniformly, the general impact of external market comparisons has diminished somewhat. And because the economic downturn has tended to adversely affect all local units of government to some significant degree, the analysis of an employer's ability to pay has risen in priority and can no longer be taken as a given for the foreseeable future.

As previously noted, the Union's position seeks across-the-board increases of 1% to the wage scales for both 2010 and 2011. The Employer's position is to provide no increases to the wage scales in both years.

The Union contends that the Employer has the ability to pay its wage proposal. In addition, the Union maintains there is no internal pattern to be followed because only one of the four bargaining units is settled. Therefore, it is proper to be guided by external comparisons and other extrinsic factors such as the rates of the CPI-U for the geographic area.

The Union's evidence portrays top patrol pay levels for 26 other cities in the Twin Cities metropolitan area. For 2009, the final year of the previous labor agreement, the bargaining unit ranked 15th out of the group of cities. According to its data, the unit would hold that same relative ranking if its wage position is awarded. The Employer's position of no increases for either year would drop the unit to 19th and 20th place rankings, respectively, for 2010 and 2011. The Union also noted that the CPI-U for the midwest rose by 2.2% for 2010 and 3.4% through June of 2011.

According to the Employer's CAFR¹ for 2010, the City had unrestricted net assets of over \$14 million and a healthy unreserved general fund balance at the end of 2010. Its net assets actually

¹Comprehensive Annual Financial Report

increased by nearly \$563,000 from the prior year.

Not surprisingly, the Employer's evidence and argument presented a much different picture of the City's financial health. The revenues needed to fund its operations have been declining significantly in recent years. The City is fully built-out with essentially no room for further development to generate greater tax revenues or associated development fees. The City is more heavily dependant upon Local Government Aid and Market Value Credit from the State of Minnesota than neighboring cities in Dakota County and others in the region. Those credits comprised 18% of the City's revenues in 2008. For 2011, they have fallen to 10%. The amount of credits anticipated and certified for 2011 in the amount of \$2,821,725 have been revised downward by nearly \$1 million. The recent shutdown of the State government did not produce a resolution that holds the promise for any increases to those aid credits in the near term.

The City's tax capacity and market value is less than 90% of its neighbor to the west and less than 43% of Inver Grove Heights to the south. For 2011, the overall market value of the community decreased by 9.91%, which was the most for Dakota County. Most of the decline occurred with residential property which fell by 11%. Again, this drop was the largest in Dakota County. The four-year decline in home values was 24% from 2007 to 2011. This was also the largest in Dakota County.

Because of environmental and soil factors associated with two closed meat packing and stockyard facilities along the river side of the City, the land cannot be viably developed without the use of tax increment financing. Such financing does not produce increased tax revenue when a tax levy is increased. As a result, a 1% levy increase for 2011 produced only \$78,000 of additional revenue that was borne predominantly by owners of residential property. The ability of that group to absorb further levy increases is poor. In recent years, approximately 8% of the population was below the poverty level and another 7% was near that level. In addition, residents relying on social security did not receive any cost of living adjustments for either 2010 or 2011. Like many cities, the Employer has been afflicted by housing foreclosures. It saw 167 sheriff sales in 2010 and 79 more through June of 2011. The depressing effect on housing values is apparent. The combined effect of the decline in the tax base and the inability of the populace to support levy increases presents a bleak picture for potential revenue improvement.

The increase in net assets from 2009 to 2010 was somewhat of an anomaly. It came from

the one-time sale of sanitary sewer credits that normally could not have been used. The sale of the credits allowed a business to relocate to a different city.

The City also has accrued liabilities of nearly \$6 million to pay for Other Post-Employment Benefits. To meet this obligation, it needs to set aside approximately \$ 565,000 per year. It does not have the present means to do this.

The City also needs to spend on capital improvements to its infrastructure. To the extent such maintenance is deferred, it becomes more expensive to perform.

Internally, the Employer contends that no employees have received a general wage increase in 2010 or 2011. The one bargaining unit for highway work voluntarily settled and agreed to accept 0% increases for both years. Their agreement ratified. Another bargaining unit for clerical, technical and professional also reached a tentative agreement for 0% increases for both years. Supervisors are not settled for 2011 but they agreed to a 0% increase for 2010. These bargaining units represent 68% of the Employer's total workforce.

According to the Employer's evidence, the term "unreserved" general fund balance is a bit of a misnomer. A large year-end figure can be misleading. The Employer cited the following paragraph from a report of the Minnesota State Auditor:

Minnesota cities report their fund balances at the close of their fiscal year (which runs concurrently with the calendar years). This creates an impression that cities have excessive amounts of revenue held in reserve. In reality, city fund balances should be relatively large at the end of the year because of local government cash-flow cycles. Cities must rely on their fund balances to meet expenses during the first five months of the next fiscal year, until they receive the first property tax payments (May) and aid payments from the state (July).

According to the State Auditor, cities should maintain an unreserved balance in their general and special revenue funds of 35 to 50 percent of operating revenues or no less than five months of operating expenditures. The City's percentage was only 18.8% as of the end of 2009. According to the Auditor's report for all Minnesota cities, this percentage placed the City 16th from the bottom. Only 15 Minnesota cities had worse percentages.

The foregoing matters are representative highlights of the kind of evidence presented by the parties. Both provided considerable quantities of data pertaining to internal considerations, external

comparisons for other cities throughout the region, and related economic information.

In a different economic climate, the Union's relatively modest wage demand would not appear to be unreasonable. The reality, however, is that the 2007-2008 time frame saw the beginning of a multi-year economic downturn that was both steep and continuing. Since then, the economic climate has not shown any reliable signs that the downturn is abating.

Given the stark reality of the current and foreseeable economic climate, the evidence leads to the conclusion that, at the present time, Union's wage scale objectives are, as a practical matter, not appropriate. Available tactics to shore up the City's financials have been largely expended. These measures were essentially of a "one-time" character that could not be repeated with the same success to deal with further revenue shortfalls or cost increases. Those shortfalls have persisted. There are no signs that the State of Minnesota will again be able to begin increasing aids to local governments in the foreseeable future or that the property tax base will improve to generate increased revenues. These two revenues source constitute the bulk of the Employer's revenue from which employee benefits can be paid.

More importantly, there is an internal consistency factor that must be recognized. Although not universal, at least one internal bargaining unit has voluntarily accepted and ratified the Employer's position. It appears that other employee groups are following suit in acknowledging that the Employer's ability to pay for general increases is weak and should not be stressed by them at this time.

Accordingly, on the evidentiary record presented, the finding must be that the Employer's ability to pay for the Union's wage scale position is sufficiently precarious that maintaining internal consistency should be, and is, the determining consideration.

AWARD ON ISSUES 1 AND 2

Employer's position is Awarded.

ISSUE 3. STEP MOVEMENT FOR 2011.

The respective positions of the parties are as follows:

Union Position All step movement for 2011 should be granted.

Employer Position There shall be no step movement for 2011.

ANALYSIS AND OPINION ON ISSUE 3

Two kinds of step movement are involved in this issue. Article 8 of the former collective bargaining agreement provides for a wage scale that allows patrol officers to reach the Top Patrol pay level after completing 3 years of service. The wage scale provides for increases of 5% after completing service requirements of 6 months, 12 months, 24 months and 36 months. According to the Union’s evidence, five bargaining unit members are eligible for one or more of these steps.

Article 13 provides for longevity allowance increases at certain career mileposts. A 3% increase to monthly base pay is allowed after completing 5 years of service. Similarly, a 4% increase is allowed after 10 years, a 5% increase after 15 years, concluding with a 6% increase after 20 years. Three members of the bargaining unit are affected by this type of step movement.

The Union noted that all other employees of the City received applicable step increases for 2011. Although the Employer agreed that all other employees received step increases for the year, it noted that the instant unit has a unique and generous health insurance provision in its labor agreement. The City pays the full premium for single coverage in the \$10 co-pay plan. All other labor agreements contain only a flat dollar contribution by the City toward coverage.

According to the Union’s evidence, the cost of step movement will be \$12,681.51 for all step movement. Upon examination by the undersigned, it appears that this figure may be understated by \$161.89 due to the use of a 1% factor instead of the 4% factor associated with the 10-year step. Regardless, more than \$10,000 of the overall cost is attributable to the five individuals moving through the wage scale steps.

The ability to pay considerations discussed previously are again relevant to this Issue. Nonetheless, they are not found to be determinative for two reasons. First, the Employer’s health

insurance contention is not one of the impasse issues in dispute. It was apparently agreed to by the Employer in negotiations without being conditioned upon a step freeze. Therefore, any connection between the step movement issue and the health insurance contention appears to be tenuous at best. It is not persuasive to the undersigned.

Secondly, the bulk of the cost for this issue of step movement is driven by what, for want of better terminology, are *learning curve* steps. It is common for wage scales, like the one involved here, to provide for frequent pay increases to recognize that new employees, in their early months of service, are confronted by a steep learning curve. By successfully negotiating that learning curve, the value of the employee to the employer rises as they attain job expertise. This increasing value warrants corresponding compensation increases more frequently than across-the-board increases.

In this case, the existing wage scale steps recognize that the law enforcement value of a new employee rises rapidly during the early years of service as he or she gains expertise and savvy on the job. It follows that a disparity will emerge if learning curve steps are frozen during the applicable time frame. Distilled to its essence, the disparity arises because the employer will enjoy the benefit of the increased law enforcement value of the officer without having to pay for it.

On balance, the evidence requires that the Employer find a way to pay for step movement as is has for all other employees.

AWARD ON ISSUE 3

The Union's position is Awarded.

ISSUE 4. COMPENSATORY TIME FOR 2011.

As presented at arbitration, this issue has two related aspects. They will be addressed separately.

Sub-Issue 4(a) Kelly Days.

The respective positions of the parties are as follows:

Union Position

(Paraphrased by the arbitrator) Up to three Kelly Days shall be used by unit members during the last three six-week rotations in

2011 as an alternative to the Union's wage proposal for 2011.

Employer Position The Union's proposal should be rejected.

ANALYSIS AND OPINION ON SUB-ISSUE 4(a)

The Union's idea on this sub-issue is to obtain three days off with pay as an alternative to its wage increase proposal for 2011. For the reasons explained in the analysis for Issue 2, the Union's wage proposal for 2011 was rejected after weighing the overall merits of the competing considerations. The Employer's evidence contended that the so-called "no increased cost" of the Kelly Day idea was incorrect and would, in fact, lead to increased overtime costs from time to time. Under the circumstances, the Union's proposal on this sub-issue lacks persuasive force.

AWARD ON ISSUE 4(a)

The Employer's position is awarded.

Sub-Issue 4(b)

The positions of the parties are as follows:

Employer Position The limit on carryover of compensatory time from one year to the next should be reduced from 90 hours to 40 hours and cash-out of unused compensatory time should be restricted to the first pay period of each calendar quarter instead of whenever requested.

Union Position The Union does not oppose the reduction of carryover limit but opposes the restriction on cashing-out the hours from whenever requested.

ANALYSIS AND OPINION ON SUB-ISSUE 4(b)

According to the Employer's evidence, it seeks predictability for meeting its cash flow

requirements. The parties have already agreed to a similar calendar quarter limitation on the cash-out of unused personal leave and unused excess vacation time.

According to the Union's evidence, the ability to request a cash-out of accumulated compensatory time has been in the parties' labor agreements since the 1994 contract. This seventeen-year practice, should not be disturbed. Moreover, there is no consistent internal pattern with other bargaining units to support the Employer's position.

Given the precariousness of the Employer's financial health, the rationale for the Employer's desire for greater predictability is evident. However, the record contains insufficient evidence to demonstrate the importance of predictability. The record lacks persuasive evidence to establish the magnitude of the problem or the difficulty associated with the Employer's present ability to deal with cash-out requests made under the current language.

The Employer has not satisfied its burden of proof to justify this structural change to a long-standing practice.

The parties are encouraged to address this subject and give it serious consideration in their next round of collective bargaining which, if it is not already underway, it soon will be.

AWARD ON ISSUE 4(b)

The Union's position is awarded on the timing of cash-out requests. The limitation on carryover hours has been agreed to by the parties.

ISSUE 6. VACATION ACCRUAL METHOD

The respective positions of the parties are as follows:

<u>Employer Position</u>	(Paraphrased by the arbitrator) Article 22 should be changed to provide that vacation leave shall be accrued and credited each pay period to end the current practice of front-loading a full year of vacation credit on January 1 st of each year after the first anniversary year.
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<u>Union Position</u>	The long-standing practice and current contract language should not be changed.
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ANALYSIS AND OPINION ON ISSUE 6

According to the Employer's evidence, a "procedure" has arisen under the current contract language whereby an employee is credited with a full year of vacation hours after completing the first year of service on the anniversary and then also is credited with another full year of vacation hours on each January 1st thereafter. This front-loading at the turn of the New Year has been done regardless of how short the interval is between the employee's anniversary date and the next January 1st. Once the vacation credit is front-loaded for the full year, the Employer has been cashing-out all of the hours credited even if the employee retires shortly thereafter. Taken to its extreme, an employee who receives the full year credit on January 1st could retire the following day and be paid for the entire amount credited. The "procedure" also can pose cash-out problems due to limitations on carrying over unused vacation from one year to the next.

The Union's evidence noted that the Employer's procedure did not arise with the tenure of the current City Administrator; it has been in place as far back as 1979. Although no other bargaining units are credited for vacation the same way, the overall mix of benefits for the other units is different. This different mix of benefits was cited in a 1996 interest arbitration wherein the Union sought to obtain severance pay benefits comparable with other units.² The arbitrator considered the mix of benefits and rejected the Union's proposal. The current vacation crediting practice was in the mix at the time. The Union is also concerned that a change in the practice will adversely affect the ability of some unit members to use vacation credits early in the calendar year.

The problem sought to be eliminated by the Employer's proposal appears to be one of self-creation. Why the Employer began crediting and cashing-out vacation as it has is not explained in the record. The language of the existing Article 22 does not explicitly require it.

Moreover, it does not appear that the Union would oppose an appropriate self-help remedy to the retirement cash-out windfall if it was to be implemented by the Employer. Indeed, the Union's post-hearing brief contained the following paragraph:

* * *

The City argued that employees who retire soon after January 1st receive more vacation pay than they earned, under the current past practice. This "problem" can

²BMS Case No. 96-PN-1788

be easily remedied by pro-rating vacation accrual for employees who retire or separate from the City. Unlike the City's proposal, this solution directly addresses the problem and addresses the problem without negatively affecting other employees. The City's proposal is simply too broad.

* * *

Given the state of the record, the undersigned finds that the City has not satisfied its burden of proof to justify the language changes it has proposed. Instead, like with Issue 4(b), this issue should be left to be addressed by the parties in the next round of collective bargaining.

AWARD ON ISSUE 6

The Union's position is awarded.



Gerald E. Wallin, Esq.
Arbitrator

August 24, 2011